



Commonwealth of Virginia  
Virginia Information Technologies Agency

**STATEWIDE HIGH SPEED DEVICE**

Date: February 21, 2013

Contract #: VA-101108-EAST

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: Eastman Kodak Company  
2600 Manitou Road  
Rochester, NY 14653

FIN: 16-0417150

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Email: [debra.payne@kodak.com](mailto:debra.payne@kodak.com)

Term: March 1, 2013 – April 30, 2013

Payment: Net 30 days

Categories/Pricing: Exhibit D

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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**

Samuel A. Nixon, Jr.  
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TDD VOICE -TEL. NO.  
711

February 14, 2013

Debra Benson  
Eastman Kodak Company

Per Section 3.A. ("Term and Termination") of contract VA-101108-EAST, 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.  
Chief Information Officer  
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September 27, 2012

Debra Benson  
Eastman Kodak Company

Per Section 3.A. ("Term and Termination") of contract VA-101108-EAST, The Virginia Information Technologies Agency has elected to exercise its option to renew the contract, from November 8, 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 High Speed Device Information Technology Contract**

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

Eastman Kodak Company

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## **STATEWIDE HIGH SPEED DEVICE INFORMATION TECHNOLOGY CONTRACT**

THIS STATEWIDE HIGH SPEED DEVICE TECHNOLOGY CONTRACT ("Contract") is entered into by and between the Virginia Information Technologies Agency (VITA) pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia, (hereinafter referred to as "VITA") and Eastman Kodak Company (Supplier), a corporation headquartered at 2600 Manitou Road, Rochester New York, 14653 to be effective as of November 8, 2010 (Effective Date).

### **1. PURPOSE**

This Contract sets forth the terms and conditions under which Supplier agrees to provide Hardware Products and Software Product(s), and related accessories, supplies, Services and Maintenance for the Commonwealth's High Speed Device needs, to Authorized Users of this Contract.

### **2. DEFINITIONS**

#### **A. Acceptance**

Successful delivery and performance of all Services and Deliverables at the location(s) designated and, if applicable, successful Acceptance testing in conformance with the Requirements, as set forth in this Contract and by an Authorized User in the applicable order or Statement of Work.

#### **B. Agent**

Any third Party independent Agent of any Authorized User.

#### **C. Authorized Users**

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

#### **D. Computer Virus**

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

#### **E. Confidential Information**

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

#### **F. Deliverable(s)**

The tangible embodiment of the Products, Software, and/or Services including the development or creation of Work Product and provision of required management, administrative and technical reports, documents, Documentation, plans, drawings, schematics, and media, provided by Supplier as identified in this Contract and/or any applicable order or Statement of Work issued under this Contract.

#### **G. Documentation**

Those materials detailing the information and instructions needed in order to allow any Authorized User and its Agents to make productive use of the Deliverables, and to implement and develop self-sufficiency with regard to the Deliverables obligated under this Contract and as may be specified in an order or Statement of Work issued under this Contract.

**H. Electronic Self-Help**

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

**I. 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 the Contract. The actual Maintenance Level for a unit of Product or Software shall be set forth in the executed order or SOW for Maintenance of that Product or Software referencing this Contract.

**J. Maintenance Period; Maintenance Coverage Period (MCP)**

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

**K. Maintenance Services (or Maintenance)**

Those preventive, remedial and support Services and Software Updates, provided by Supplier at Authorized User's request in order to ensure continued operation of the Product, Work Product or Software.

**L. Operating Condition**

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

**M. Party**

Supplier, VITA, or any Authorized User.

**N. Product(s)**

Hardware, peripherals, and any other equipment or Software accessories, including the hardware's system Software, all upgrades, all applicable user Documentation and related accessories as set forth in this Contract.

**O. Receipt**

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

**P. Requirements**

The functional, performance, operational, compatibility, Acceptance testing criteria and other parameters and characteristics of the Products, Software, Services, and/or other Deliverables as set forth in Exhibit D and such other parameters, characteristics, or performance standards that may be agreed upon in writing by VITA and Supplier or the Parties to an order or Statement of Work issued hereunder. [In case of conflict, see the Entire Contract clause for order of precedence.]

**Q. Response Time**

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

**R. Services(s)**

Any work performed or Services provided by the Supplier to VITA or any Authorized User under this Contract, including but not limited to installation, testing, quality control, support, maintenance, training the discovery, creation, or development of any Work Product and the provision of any Deliverable as set forth in this Contract and any approved Statement of Work or order issued under this Contract.

**S. Software**

The programs and code, and any subsequent modifications or releases of such programs and code, excluding Work Product, provided by Supplier under this Contract.

**T. Software Publisher**

The licensor of any Software, or hardware Product's System Software, provided by Supplier under this Contract.

**U. Software Update**

Any Software patch, fix, upgrade, update, enhancement, new release, or access mode, including, without limitation, modifications to the Software which can increase the speed, efficiency, or base of operation of the Software or add additional capabilities to or otherwise improve the functionality of the Software, which are to be provided by Supplier under this Contract as set forth in the Contract and any Authorized User's order or SOW. Excluding any Software Update provided for general release, and unless otherwise stated in the Contract, any Software Update developed by Supplier or any other third Party, using Commonwealth funds, shall be deemed Work Product.

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

Any document that describes, at a minimum, the Deliverables, due dates, performance-based milestones, assignment duration and payment obligations for a specific project, engagement, or assignment for which Supplier shall provide Products, Software, Services or Deliverables as authorized under this Contract to an Authorized User), which, upon signing by both Parties, shall be deemed a part of this Contract. An SOW should be accompanied by a valid purchase order, referencing this Contract, from the Authorized User.

**W. 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).

**X. System Software**

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

**Y. Work Product**

Inventions, combinations, machines, methods, formulae, techniques, processes, improvements, Software designs, computer programs, strategies, specific computer-related know-how, data and original works of authorship (collectively, the "Work Product") discovered, created, or developed by Supplier, or jointly by Supplier and an Authorized User(s) in the performance of this Contract or any order issued hereunder. Work Product shall not include configuration of Software.

**3. TERM AND TERMINATION**

**A. Contract Term**

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, shall continue to be effective and legally binding for a period of two (2) years. VITA, in its sole discretion, may extend this Contract for up to three (3) additional one (1) year periods after the expiration of the initial two (2) year period. VITA will issue a written notification to the Supplier stating the extension period thirty (30) days prior to the expiration of any current term. In addition, performance of an order or Statement of Work (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 Services and Deliverables pursuant to such order or SOW have met the final Acceptance criteria of the applicable Authorized User and Supplier has received formal Acceptance from the Authorized User. Supplier shall not include any automatic renewal provisions in any maintenance agreement, or software license as part of any order or SOW between an Authorized User and the Supplier or Supplier's OEM, if the Supplier is a reseller of the Product(s).

**B. Termination for Convenience**

VITA may terminate this Contract, in whole or in part, or any order or SOW issued hereunder, in whole or in part except for Maintenance Services agreements. In the event of non-appropriation of funds or breach of contract, an Authorized User may terminate a maintenance service agreement. An Authorized User may terminate an order or SOW, in whole or in part, upon not less than thirty (30) days prior written notice.

**C. Termination for Breach or Default**

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

If VITA deems the Supplier to be in breach and/or default, VITA shall provide Supplier with notice of breach and/or default and allow Supplier fifteen (15) days to cure the breach and/or default. If Supplier fails to cure the breach as noted, VITA may immediately terminate this Contract or any order or SOW issued hereunder, in whole or in part. If an Authorized User deems the Supplier to be in breach and/or default of an order or SOW, such Authorized User shall provide Supplier with notice of breach and/or default and allow Supplier fifteen (15) days to cure the breach and/or default. If Supplier fails to cure the breach and/or default as noted, such Authorized User may immediately terminate its order or SOW, in whole or in part. Any such termination shall be deemed a Termination for Breach or 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, and VITA shall provide written notice to Supplier of such termination. Supplier shall provide prompt written notice to VITA if Supplier is charged with violation of 31 USC 1352 or if federal debarment proceedings are instituted against Supplier.

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

All payment obligations under this Contract are subject to the availability of legislative appropriations at the federal, state, or local level, for this purpose. In the event of non-appropriation of funds, irrespective of the source of funds, for the items under this Contract, VITA may terminate this Contract, in whole or in part, or any order, in whole or in part, or an Authorized User may terminate an 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 Services and Deliverables rendered by Supplier and Accepted by the Authorized User prior to the termination date.

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

**F. Transition of Services**

Prior to or upon expiration or termination of this Contract and at the request of VITA, Supplier shall provide all assistance as VITA or an Authorized User may reasonably require to transition Services to the Authorized User, its Agent(s) or any follow-on Supplier(s). This obligation may extend beyond expiration or termination of the Contract for a period not to exceed six (6) months. In the event of a termination for breach and/or default of Supplier, Supplier shall provide such assistance at no charge or fee to VITA or any Authorized User; otherwise, Supplier shall provide such assistance at the hourly rate or a charge agreed upon by Supplier and VITA or an Authorized User.

**G. Contract Kick-Off Meeting**

Within 30 days of Contract award, Supplier may be required to attend a contract orientation meeting, along with the VITA contract manager/administrator, the VITA and/or other CoVa Agency project manager(s) or authorized representative(s), technical leads, VITA representatives for SWaM and Sales/IFA reporting, as applicable, and any other significant stakeholders who have a part in the successful performance of this Contract. The purpose of this meeting will be to review all contractual obligations for both parties, all administrative and reporting Requirements,

and to discuss any other relationship, responsibility, communication and performance criteria set forth in the Contract. The Supplier may be required to have its assigned account manager as specified in in the Contract and a representative from its contracts department in attendance. The time and location of this meeting will be coordinated with Supplier and other meeting participants by the VITA contract manager.

#### **H. Contract Closeout**

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

#### **4. RIGHTS TO WORK PRODUCT**

If Authorized User is a state agency, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code of Virginia, any license to pre-existing work shall be held by, and all rights in, title to, and ownership of Work Product shall vest with the Commonwealth. If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, any license to pre-existing work shall be held by, and all rights in, title to, and ownership of Work Product shall vest with that public body.

##### **A. Work Product**

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

##### **B. Ownership**

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

If and to the extent that Supplier may, under applicable law, be entitled to claim any ownership interest in the Work Product, Supplier hereby irrevocably transfers, grants, conveys, assigns and relinquishes exclusively to the Commonwealth or the Authorized User any and all right, title and interest it now has or may hereafter acquire in and to the Work Product under patent, copyright, trade secret and trademark law in perpetuity or for the longest period otherwise permitted by law. If any moral rights are created, Supplier waives such rights in the Work Product. Supplier further

agrees as to the Work Product to assist the Commonwealth or the Authorized User in every reasonable way to obtain and, from time to time, enforce patents, copyrights, trade secrets and other rights and protection relating to the Work Product, and to that end, Supplier and its employees shall execute all documents for use in applying for and obtaining such patents, copyrights, and other rights and protection, and in protecting trade secrets, with respect to such Work Product, as the Commonwealth or the Authorized User may reasonably request, together with any assignments thereof to the Commonwealth or the Authorized User or entities designated by the Commonwealth or the Authorized User.

**C. Pre-existing Rights**

If and to the extent that any pre-existing rights are embodied or reflected in the Work Product, Supplier hereby grants to the Commonwealth or the Authorized User the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (i) use, execute, reproduce, display, perform, distribute copies of and prepare derivative works based upon such pre-existing rights and any derivative works thereof and (ii) authorize others to do any or all of the foregoing.

**D. Return of Materials**

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

**5. SUPPLIER PERSONNEL**

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

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

**B. Supplier Personnel Supervision**

Supplier acknowledges that Supplier or any of its Agents, contractors, or subcontractors, is and shall be the employer of Supplier personnel, and shall have sole responsibility to supervise, counsel, discipline, review, evaluate, set the pay rates of and terminate the employment of Supplier personnel.

**C. Key Personnel**

This Contract or an Authorized User's order or SOW may designate certain of Supplier's personnel as Key Personnel or Project Managers. Supplier's obligations with respect to Key Personnel and Project Managers shall be described in the applicable order or SOW. Failure of Supplier to perform in accordance with such obligations may be deemed a default of this Contract or of the applicable order or SOW.

**D. Subcontractors**

Supplier shall not use subcontractors to perform any portion of this Contract or any order or SOW issued under this Contract unless specifically authorized in writing to do so by VITA or the Authorized User, respectively. If an order or SOW issued pursuant to this Contract is supported in whole or in part with federal funds, Supplier shall not subcontract any portion of the work pursuant to such order or SOW to any subcontractor that is a Party excluded from Federal Procurement and Nonprocurement Programs. In no event shall Supplier subcontract any portion of the work to any subcontractor which is debarred by the Commonwealth of Virginia or which owes back taxes

to the Commonwealth and has not made arrangements with the Commonwealth for payment of such back taxes.

## **6. FEES, ORDERING AND PAYMENT PROCEDURE**

### **A. Fees and Charges**

As consideration for the Products, Services and Deliverables provided hereunder, an Authorized User shall pay Supplier the fee(s) set forth on Exhibit D, which lists any and all fees and charges. The fees and any associated discounts shall be applicable throughout the term of this Contract; provided, however, that in the event the fees or discounts apply for any period less than the entire term.

Supplier agrees that it shall not increase the fees more than once during any twelve (12) month period, commencing at the end of year one (1). No such increase for Products shall exceed the lesser of three percent (3%) or the annual increase in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, Not Seasonally Adjusted, as published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/cpi/home.htm>), for the effective date of the increase compared with the same index one (1) year prior. No such increase for Services shall exceed eight percent (8%). (Note: this is consistent with our GSA and other State contracts) Any such change in price shall be submitted in writing in accordance with the above and shall not become effective for sixty (60) days thereafter. Supplier agrees to offer price reductions to ensure compliance with the Competitive Pricing Section.

### **B. Reimbursement of Expenses**

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

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

### **C. Statement of Work (SOW)**

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

### **D. Ordering**

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 purchase or license from Supplier any of Supplier's Products or Services. This Contract is optional use and non-exclusive, and all Authorized Users may, at their sole discretion, purchase, license or otherwise receive benefits from third Party Suppliers of Products and Services similar to, or in competition with, the Products and Services provided by Supplier.

Supplier is required to accept any order placed by an Authorized User through the eVA electronic procurement website portal (<http://www.eva.virginia.gov>). eVA is the Commonwealth of Virginia's e-procurement system. State agencies, as defined in §2.2-2006 of the Code of Virginia, shall

order through eVA. All other Authorized Users are encouraged to order through eVA, but may order through the following means:

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

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

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

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

#### **E. 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 Products, Services or Deliverables identical or similar to those provided by Supplier pursuant to this Contract. The RFQ process is typically used when an Authorized User requires a complete solution that may be fulfilled by Products, Software 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.

Supplier shall respond to the RFQ by providing a quote, which shall include (a) a detailed description of each Product, Services and Deliverables proposed, at the Exhibit D line item level, (b) the quantity of each such component, (c) a unit price not to exceed the price(s) in Exhibit D, (d) any additional percentage discount offered, and (e) an extended price. If requested by the Authorized User,

Should Supplier be unable to respond to the RFQ due, for example, to resource constraints, Supplier shall notify Authorized User in writing of its inability to perform the work requested by such Authorized User, and provide the reasons for such inability to perform, prior to the due date for the submission of quotes in response to the RFQ.

#### **F. Orders that Include Trade-in Products**

In addition to the foregoing, if an Authorized User places an order or SOW for Products, where a trade-in of old products is included, the Authorized User must comply with the Virginia DOA CAPP Manual and must adhere to the rules and regulations in the Agency Procurement and Surplus Property Manual, published by the Division of Purchases and Supply (DPS), Department of General Services (DGS). The Supplier agrees to provide relevant information and completion of related documentation in a timely manner as required by the Authorized User to satisfy compliance. Commonwealth localities are exempt from the requirements of this provision; however, may have specific requirements that must be included in their order or SOW to ensure Supplier compliance.

**G. Product Transfers between Authorized Users**

In the event of a transfer of Product to another location, the Authorized User receiving the transferred Product(s) will pay Supplier removal and installation charges. The Supplier is responsible for preparation and is reimbursed per the order or SOW authorized charges as approved in advance by the Authorized User receiving the transferred Product(s). All purchase option credits, present and future on such Product(s) will remain in effect for use by the Authorized User receiving the transferred Product(s) and that Authorized User is responsible for tracking the Product(s) for compliance with the DOA CAPP Manual and the DGS Surplus Property Manual rules and regulations. Commonwealth localities are exempt from the requirements of this provision; however, may have specific requirements that must be included in their order or SOW to ensure Supplier compliance.

**H. Change Orders**

All changes to the Services and Deliverables to be provided pursuant to any given order or SOW must be described in a written change request, which includes any appropriate adjustments to the order or SOW. Either Party to an order or SOW may issue a change request that will be subject to written approval of the other Party before it becomes part of this Contract. In no event shall any order or SOW or any modification thereto require the Supplier to perform any work beyond the scope of this Contract.

**I. Invoice Procedures**

Supplier shall remit each invoice to the "bill-to" address provided with the order promptly after all Products, Software, Services, , and Deliverables, have been accepted and in accordance with the payment schedule in the applicable order. Payment for support Services shall be annually in arrears unless otherwise stated herein, or in any order referencing this Contract. No invoice shall include any costs other than those identified in the executed order, which costs shall be in accordance with Exhibit D. Without limiting the foregoing, all shipping costs are the Supplier's responsibility except to the extent such charges are identified in Exhibit D, or as noted in any executed order referencing this Contract. Invoices issued by the Supplier shall identify at a minimum:

- i). Itemization and description of Product, Software, Services Type, Deliverables, and, if applicable, project milestone
- ii). Quantity, charge and extended pricing for each Product, Software, and/or Services item or milestone
- iii). Product serial number, if any
- iv). Applicable order date
- v). Ship or delivery date
- vi). Ship-to or delivered-to contact name
- vii). This Contract number and the applicable order number
- viii). Supplier's Federal Employer Identification Number (FEIN).

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

**J. Purchase Payment Terms**

Supplier is responsible for the accuracy of its billing information. Supplier agrees not to issue invoices hereunder until items or milestones have met Acceptance criteria. Charges for Products, Software, 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.

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

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

## 7. REPORTING

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

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

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

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

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

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

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

### B. Small Business Participation

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

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

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

## 8. STEERING COMMITTEE

[Reserved]

**9. AUTHORIZED USER SELF-SUFFICIENCY FOR SOME OF THE KODAK PRODUCTS OFFERED, KODAK DOES NOT OFFER A TRAINING PROGRAM THAT WOULD RESULT IN THE CERTIFICATION OF END USER PERSONNEL TO PERFORM EQUIPMENT MAINTENANCE. CONSEQUENTLY, THE COST OF DEVELOPING SUCH A PROGRAM FOR A SINGLE END USER MAY MAKE ANY SUCH TRANSITION UNAFFORDABLE.)**

Prior to or at any time during Supplier's performance of an order issued, or which may be issued, pursuant to this Contract, an Authorized User may require that Supplier provide to Authorized User a detailed plan to develop Authorized User self-sufficiency and to transition operation and management to Authorized User or its Agent, which Agent may be VITA or an Agent of VITA or a third Party provider under contract with Authorized User. At Authorized User's request and pursuant to an order for Supplier's Services issued hereunder, Supplier shall provide all assistance reasonably required by Authorized User to develop self-sufficiency. During and/or after the transition period, Authorized User may, if applicable and at its sole discretion, elect to order or continue Maintenance Services from Supplier for any Software or hardware components provided by Supplier under this Contract.

**10. ESCROW AGREEMENT**

[Reserved]

**11. COMPETITIVE PRICING**

Supplier warrants and agrees that each of the charges, economic or Product terms or warranties granted pursuant to this Contract are comparable to or better than the equivalent charge, economic or Product term or warranty being offered to any commercial or government customer of Supplier under similar terms and conditions.

**12. CONFIDENTIALITY**

**A. Treatment and Protection**

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

**B. Exclusions**

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

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

**C. Return or Destruction**

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

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

**D. Confidentiality Statement**

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

**13. 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 losses, damages, claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, assessments, fines, penalties (whether criminal or civil), judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Commonwealth's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) any act or omission of any employee, agent, or subcontractor of Supplier, (iii) breach of any representation, warranty or covenant of Supplier contained herein, (iv) any defect in the Products, Software, or the Services, or (v) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Products, Software or Services. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to the Commonwealth.

In the event that a Claim is commenced against any of Commonwealth's Indemnified Parties alleging that use of the Products, Software, 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 Products, Software 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 Products, Software or Services, or any component thereof; or (b) replace or modify such infringing Products, Software 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 Products, Software 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 Solution. 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 Products, Software or Services, along with any other components of any products rendered unusable by any Authorized User as a result of the infringing component, and refund the price paid to Supplier for such components.

## **B. Liability**

Except for liability with respect to (i) any intentional or willful misconduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) any act or omission of any employee, agent, or subcontractor of Supplier, (iii) claims for bodily injury, including death, and real and tangible property damage, (iv) Supplier's indemnification obligations, (v) Supplier's confidentiality obligations, and (vi) Supplier's security compliance obligations, Supplier's liability shall be limited to twice the aggregate value of 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 CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS.**

## **14. INSURANCE**

[Reserved]

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

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

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

## **16. IMPORT/EXPORT**

In addition to compliance by Supplier with all export laws and regulations, VITA requires that any data deemed "restricted" or "sensitive" by either federal or state authorities, must only be collected, developed, analyzed, or otherwise used or obtained by persons or entities working within the boundaries of the United States.

## **17. BANKRUPTCY**

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

## **18. HARDWARE-SPECIFIC PROVISIONS**

### **A. Delivery, Installation and Acceptance**

#### **1. Delivery Procedure**

Supplier shall deliver all Product(s) F.O.B. Destination with such destination being the "ship to" address specified in the applicable order. If there is any special rigging required for final Product placement, Authorized User shall bear those costs. For orders for which Supplier is to provide installation of the Product(s), Supplier shall bear all risk of loss of or damage to the Product(s) until Receipt by the Authorized User. For orders for which Supplier is not to provide installation of the Product(s), Supplier shall bear all risk of loss or damage to the Product(s) until Receipt. In all cases, Supplier shall arrange and pay for all transportation and insurance sufficient to fully protect the Product(s) while in transit. Each shipment shall include a packing slip indicating this Contract number, the Authorized User's order number, the part number, a description of the Product(s) 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(s) 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 direct purchased Product(s), excluding System Software, shall pass upon Acceptance.

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

#### **2. Late Delivery**

Supplier hereby acknowledges and agrees that failure to deliver the Product(s) ordered in strict accordance with the mutually agreed upon delivery schedule determined in accordance with this Contract or an approved and Supplier-accepted order issued by Authorized User shall constitute a material breach of this Contract resulting in damages to the ordering Authorized User, the total sum of which would be impracticable or difficult to ascertain as of the Effective Date of this Contract or the approved order issued by the Authorized User. As an estimate of the minimum amount of damages such Authorized User will suffer, Supplier agrees to credit the Authorized User an agreed upon percent of the order's total purchase price that is specified in the approved and Supplier-accepted order, for each day that the Product(s) is/are undelivered or nonoperational for a period of thirty days (30) following the agreed upon delivery date. If the delay lasts longer than thirty (30) days solely through fault of Supplier, the Authorized User may immediately cancel the order and, only in the event of such cancellation, collect as late delivery damages five percent (5%) of the total purchase price. Any credit due the Authorized User will be applied to the next periodic invoice.

In addition, in the event the Supplier fails for any reason to deliver within thirty-five days (35) of the agreed upon delivery date set forth in the order/schedule, the ordering Authorized User, at its own discretion, may give Supplier oral or written notice of breach. Once notice by such Authorized User is sent or given, the Authorized User may immediately procure the undelivered items, or items similar thereto, from another source. Once the Authorized User has effected a purchase from an alternate source (in accordance with the Virginia Public Procurement Act, §§ 2.2-4300 et seq. of the Code of Virginia), the Authorized User may charge-back Supplier, in which case Supplier agrees to reimburse the Authorized User for any difference in cost between the original contract price and the Authorized User's cost to cover from the alternate source. In no event shall any Authorized User be held to pay Supplier any costs incurred by Supplier, including but not limited to ordering, marketing, manufacturing, or delivering the item(s) which are subject of such Authorized User's notice of breach. Notwithstanding the foregoing, the Authorized User reserves any and all other remedies available at law or in equity.

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

(To be proposed by supplier without conflict to subsection 6.G, Orders that Include Trade-in Products)

**4. Product Installation**

Only if Authorized User's order or SOW includes Supplier's installation services, Supplier is not responsible for initial installation of Product. Installation shall include: unpacking, removal of all shipping/packing materials, positioning, connecting to internal utility services, testing, related necessary services to allow for Acceptance by the Authorized User.

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

**5. Product Acceptance**

Product(s) shall be deemed accepted when the ordering Authorized User determines that such Product(s) successfully operates in accordance with the Requirements. Such Authorized User shall commence Acceptance testing within five (5) days, or within such other period as set forth in the applicable order, after receipt/installation of the Product(s). Acceptance testing will be no longer than five (5) 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>, or a successor URL(s)). Authorized User shall provide to Supplier written notice of Acceptance upon successful Acceptance testing. Should Authorized User fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) days following the Acceptance testing period, the Product(s) shall be deemed Accepted.

**6. Cure Period**

Supplier shall correct any non-conformities identified during Acceptance testing and re-submit such previously non-conforming Product(s) for re-testing within seven (7) days of written notice of non-conformance, or as otherwise agreed between the Authorized User and Supplier in the applicable order. Should Supplier fail to cure the non-conformity or deliver Product(s) which meets the Requirements, such Authorized User may, in its sole discretion: (i) reject the Product(s) in its entirety and recover amounts previously paid hereunder; (ii) issue a "partial Acceptance" of the Product(s) with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Product(s) while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of a Product(s) to meet, in all material respects, the Requirements after the second set of

acceptance tests may constitute a default by Supplier. In the event of such default, the Authorized User may, at its sole discretion, terminate its order, in whole or in part, for the Product(s) and any Services to be provided thereunder by Supplier.

#### **7. Product Discontinuation**

During the term of this Contract, if any Product(s) listed on Exhibit D of this Contract is discontinued and Supplier does not offer a substitute acceptable to VITA, Supplier shall, for each Authorized User who purchased the discontinued Product(s), continue to meet such Authorized User's needs for the discontinued Product(s) for not less than twelve (12) months. Additionally, Supplier shall make available to the Authorized User maintenance parts for discontinued Product(s) for five (5) years from the date of such discontinuation. In every event, Supplier will provide any Authorized User with 120 days advance written notice of its intent to discontinue any Product type previously ordered by such Authorized User.

### **B. Product Support and Additional Services**

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

##### **a) Documentation and Support Availability**

In the event that VITA terminates this Contract, Supplier shall provide all the necessary user and installation documentation and maintenance and repair training reasonably required to enable any Authorized User to maintain and repair the Product(s) itself or to obtain support and maintenance services from a third-party. Supplier shall also provide the documentation and training necessary to allow any Authorized User to self-maintain to the subcomponent level. In addition, Supplier agrees to provide, for a period of five (5) years from the date of the last purchase, spare parts and components at the cost set forth in Exhibit D of this Contract, including those solely sourced by Supplier, to enable any Authorized User or its designated third-party maintenance provider to provide full maintenance and repair of the Product(s).

##### **b) Timeliness and Price**

Supplier agrees to make the above-referenced documentation, training and spare parts and components available within fifteen (15) days following receipt of a written request, and at a price set forth in Exhibit D of this Contract, such price not to exceed Supplier's published price list, or the fair market value, but in no event at prices above the lowest price paid by any other customer of Supplier. In addition, Supplier agrees to sell Product(s), as set forth in Exhibit D of this Contract, to any Authorized User's third-party maintenance provider under contract with such Authorized User, at the prices as set forth in Exhibit D of this Contract, 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.

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

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

#### **3. Training**

Only if Authorized User's order or SOW includes Supplier's training services, Supplier is not responsible for initial training. 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 D of this Contract.

#### **4. Parts and Maintenance Support**

Supplier agrees to make available new/certifiable as new spare parts and the Maintenance Services identified in the Maintenance Services section herein and Exhibit D of this Contract hereto for each Product type ordered by an Authorized User, for five (5) years from the expiration of the initial Warranty Period of the last unit of any given Product type provided by Supplier to such Authorized User. Thereafter, Supplier shall advise such Authorized User of its intent to discontinue either certain parts or maintenance services for any Product type ordered by the Authorized User.

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

#### **5. Inventory Record**

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

#### **6. Product Service Record**

Supplier shall maintain, at no additional cost, a Product Service Record for each unit of Product covered under warranty or maintenance. The Product Service Record shall record the following for such unit of Product: (i) installation/ relocation/ removal/ modifications; (ii) remedial actions; (iii) preventive actions; (iv) any additional services not covered by warranty or maintenance. Upon request by the Authorized User, Supplier shall provide, at no additional cost, a copy of the Product Service Record.

#### **7. 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 Product(s); (ii) assistance to Authorized User's communications department in mutually acceptable duties related to the warranty or maintenance services provided under this Contract, if applicable. The Authorized User shall compensate Supplier for such additional on-site services in accordance with the prices identified in Exhibit D of this Contract.

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 D of this Contract and shall be inclusive of all

expenses. Warranty or maintenance services requested for a unit of hardware within the forty-eight (48) hour period immediately following Remedial Maintenance performed on the same unit of hardware for the same problem, shall not be considered an additional service and shall be provided at no charge. Requests for additional services shall only be approved for payment by the Authorized User when a Product Service Record is included with the applicable invoice.

### **C. Warranty and Remedy**

#### **1. Supplier**

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

#### **2. Ownership**

Supplier is the owner of the Product(s) or otherwise has the right to grant to the Commonwealth or any Authorized User title to or the right to use the Product(s) 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(s), excluding the System Software, free and clear of all liens, claims, security interests and encumbrances.

#### **3. 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.

#### **4. Compatibility**

Supplier warrants that each Product provided hereunder is, and shall continue to be, data, program, and upward compatible with any other Product available or to be available from Supplier within the same family of Products so that data files created for each Product can be utilized without adaptation of the other Products, and so that programs written for the Product shall operate on the next generation of Products, and not result in the need for alteration, emulation, or other loss of efficiency for a period of not less than ten (10) years.

#### **5. Product(s)**

Supplier warrants the following with respect to the Product(s):

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

remote access or otherwise. If the System Software contains authorization codes allowing access to a data base or other software, Supplier warrants that such codes shall be perpetual and non-expiring.

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

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

**7. Warranty Services**

During the warranty period as described for each category for each segment in Exhibit D, or as specified in the applicable order, Supplier warrants that the Product(s) 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 D of this Contract. 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.

For Products that are replaced during either the warranty, the Warranty Period does not restart once the replacement product has been accepted by Authorized User.

Exhibit E of this Contract 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 E of this Contract defines coverage periods, response times, and restore times.

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

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

a) Products Covered

Exhibit D of this Contract lists all Product types covered under warranty.

b) Preventive Maintenance

Supplier's Preventive Maintenance offerings and responsibilities, and the Authorized User's associated remedies, are described in Exhibit E of this Contract.

c) Remedial Maintenance

Supplier's Remedial Maintenance offerings and responsibilities, and the Authorized User's associated remedies, are described in Exhibit E of this Contract.

d) Replacement Parts

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

e) Spares

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

f) 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 E of this Contract.

g) 90 Day Next Business Day Exchange/One-year On-Site Warranty

Supplier's depot warranty offerings and responsibilities are described in Exhibit E of this Contract.

h) On-site Warranty

Supplier's on-site warranty offerings and responsibilities are described in Exhibit E of this Contract.

i) System Software Warranty

As part of the standard warranty offering, for a period of not less than twelve (12) months beginning on the date of Acceptance, Supplier shall provide the following warranty services (including unlimited telephonic support and all necessary travel and labor) without additional charge to any Authorized User to maintain the System Software in accordance with the Requirements:

i). New Releases

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

ii). Coverage

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

iii). Response and Restore Times

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

iv). Software Evolution

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

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

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

j) Remedies

In addition to any remedies described in Exhibit E of this Contract, if Supplier is unable to make a Product, including System Software, conform, in all material respects to the Requirements, within thirty (30) days following notification by an Authorized User, Supplier

shall, at such Authorized User's request, either (i) replace the non-conforming Product or (ii) accept return of the non-conforming Product and return all monies paid by such Authorized User for the returned Product.

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

k) **Product Maintenance Services and Renewal Options**

At least sixty (60) days prior to the expiration of the Warranty Period, Supplier shall notify the Authorized User, and the Authorized User, at its sole discretion, may order from Supplier Maintenance Services, including System Software Maintenance for a period of one (1) year (Maintenance Coverage Period) and for the annual fee identified in Exhibit D of this Contract. Supplier warrants that it shall make Maintenance Services available for all the Products, including System Software, listed in Exhibit D of this Contract, or which are components of Products listed in Exhibit D of this Contract, for a period of at least five (5) years from the expiration of the initial Warranty Period of any Product provided to an Authorized User pursuant to this Contract. Termination of this Contract or cancellation of Maintenance Services, including System Software Maintenance Services if provided as a separate offering from Supplier, by an Authorized User shall not affect this Contract or the grant of any license pursuant thereto.

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

**8. Maintenance Services**

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

Exhibit E of this Contract 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 E of this Contract defines coverage periods, response times, and restore times.

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

**9. 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:

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

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.

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

## 10. 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 eight percent (8%), whichever is less. Termination of this Contract or cancellation of Maintenance Services, including System Software Maintenance Services if provided as a separate offering from Supplier, by an Authorized User shall not affect this Contract or the grant of any license pursuant thereto.

## 11. Services

Maintenance Services shall be as follows:

a) Product Covered

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

b) Preventive Maintenance

Supplier's Preventive Maintenance offerings and responsibilities, and the Authorized User's associated remedies, are described in Exhibit E of this Contract.

c) Remedial Maintenance

Supplier's Remedial Maintenance offerings and responsibilities, and the Authorized User's associated remedies, are described in Exhibit E of this Contract.

d) Replacement Parts

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

e) Spares

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

f) 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 E of this Contract.

g) Advanced Replacement Services

Supplier's advanced replacement service offerings and responsibilities are described in Exhibit E of this Contract.

h) On-site Maintenance Services

Supplier's on-site maintenance service offerings and responsibilities are described in Exhibit E of this Contract.

i) System Software Maintenance

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

i). New Releases

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

ii). Coverage

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

iii). Response and Restore Times

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

iv). Software Evolution

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

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

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

v). Remedies

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

**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.**

**D. Scope of Use**

Any Authorized User may use the Product(s), and any software licensed in connection with such Product(s), on a worldwide basis for the benefit of itself and its agents. Supplier further authorizes use of the Product(s) 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.

**E. Software License**

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

VITA will consider Supplier-provided language ONLY when Supplier is a reseller of the Software and the software publisher requires and End User License Agreement (EULA). In such case, Supplier is advised that VITA will require an addendum to such EULA to address terms and conditions in such EULA with which VITA, as a government entity, by law or by policy, cannot agree.

**1. License Grant**

Supplier hereby grants to the Commonwealth and all Authorized Users a fully paid, perpetual, worldwide, nonexclusive, transferable, irrevocable license to use, and to permit any agent of the Commonwealth or such Authorized User to use, System Software for each Product. Each license granted under this Contract authorizes the Commonwealth or such Authorized User and any agent of the Commonwealth or such Authorized User to use Supplier-licensed programs in machine readable form on any system without limitation. It is expressly understood that “perpetual” license rights shall commence upon delivery of the System Software to the Authorized User and shall exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of this Contract. The System Software is the property of Supplier, and no title or ownership of the System Software or any of its parts, including documentation, is transferred to the Commonwealth or the Authorized User.

**2. Limitations on Copying and Disclosure**

The Commonwealth, an Authorized User, or any agent of the Commonwealth or such Authorized User may make a reasonable number of backup, archival, and disaster recovery copies of the System Software. Any copies of the software or documentation made by the Commonwealth or an Authorized User pursuant to this Contract shall bear all copyright, trademark and other proprietary notices included therein by Supplier and, except as expressly authorized, neither the Commonwealth nor the Authorized User shall distribute same to any third-party without Supplier's prior written consent. The Commonwealth may distribute the System Software and documentation if such distribution is incidental to transfer of Product to which it has taken title. Neither the Commonwealth nor any Authorized User may resell the System Software except if such resale is incidental to the resale of Product(s) to which the Commonwealth or such Authorized User has taken title.

**3. Business Continuity and Recovery**

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

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

**4. 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.

**5. 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.

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

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

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

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

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

### **19. SOFTWARE LICENSE (NON-HARDWARE RELATED)-SPECIFIC PROVISIONS**

#### **A. 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.

##### **1. License Grant**

Software licensed by Supplier

- i). Supplier grants to the Commonwealth and all Authorized Users a fully paid, perpetual, worldwide, nonexclusive, transferable, irrevocable object code license to use, copy, modify, transmit and distribute the non-hardware related Software and Documentation including any subsequent revisions, in accordance with the terms and conditions set forth herein and subject only to the limitations and/or restrictions explicitly set forth in this Contract. It is expressly understood that "perpetual" license rights shall commence upon delivery of the Software to the Authorized User and shall exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of this Contract. The Software is the property of Supplier and/or its licensors, and no title or ownership of the Software or any of its parts, including Documentation, shall transfer to the Commonwealth or any Authorized User.
- ii). The Commonwealth and all Authorized Users shall have the right to use, copy, modify, transmit and distribute the Software for their benefit, for government use and purposes, and for the benefit of their Agents, including internal and third-party information processing.
- iii). Reserved.
- iv). The Commonwealth and any Authorized User may allow access to the Software by third party vendors who are under contract with an Authorized User to provide services to or on behalf of such Authorized User, or by other entities as required for conducting the business of government. Access includes loading or executing the Software on behalf of such Authorized User or its Agents.
- v). The license fee includes a test system copy, which consists of the right to use the Software for non-production test purposes, including but not limited to, problem/defect identification,

- remediation, and resolution, debugging, new version evaluation, Software interface testing, and disaster recovery technique analysis and implementation.
- vi). In the event that all of an Authorized User's copies of the Software, including all backup copies, are destroyed, irreparably damaged or otherwise lost due to fire, explosion, sabotage, flood or other disaster, Supplier shall provide to such Authorized User, at no additional cost, replacement copies of the Software and Documentation. Nothing contained in this Section shall obligate Supplier to replace or assist in the recovery of data lost concurrent with the loss of the Software.
  - vii). An Authorized User may make a reasonable number of copies of the Software and Documentation for use in training, support, demonstrations, backup, archiving, disaster recovery and development and may run the Software concurrently at a back-up site for no additional license fees or costs. Such Authorized User agrees that any copies of the Software or Documentation that it makes under this Contract shall bear all copyright, trademark and other proprietary notices included therein by Supplier.
  - viii). Except as expressly authorized, an Authorized User shall not distribute the Software to any third party without Supplier's prior written consent.
  - ix). Except as provided or allowed by law, no Party shall reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from any software or other intellectual property of any other Party.

Software licensed by Software Publisher

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

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

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

## **2. License Type**

All licenses granted, regardless of the type, include all uses set forth above. License type may vary by Software product and shall be set forth in Exhibit D of this Contract and identified on any order issued pursuant to this Contract.

Designated CPU License

The license(s) granted under this Section authorizes use of the Software only on the number of CPU(s) listed on Exhibit D of this Contract or in an order placed by an Authorized User. An Authorized User may transfer the Software to a different machine to the extent that the license price for such new CPU(s) is equivalent to the CPU(s) initially licensed. If the licensed CPU is inoperative because of (i) malfunction, (ii) performance of maintenance, or (iii) modification to the licensed CPU, or (iv) because the Software is being transferred to another CPU, such Authorized User may use the Software on a replacement CPU as long as required by the mentioned conditions.

Concurrent Use license

The license(s) granted under this Section authorizes use of the Software on any system based on the total number of Concurrent Users. The number of "Concurrent Users" is defined as the maximum number of concurrent Sessions connected at a given point in time. A "Session" is defined as an active user executing the Software. The Authorized User shall specify an initial number of Concurrent User licenses in its initial order pursuant to this Contract. An Authorized User may increase the number of Concurrent User licenses upon

issuing an order for additional Concurrent User licenses. The license fee for additional Concurrent User licenses and payment of the license fee is set forth on Exhibit D of this Contract.

#### Site License

The license(s) granted under this Section authorizes use of the Software on any system located at the "Site" as such term is defined in the applicable order.

#### Project Specific License

The Project Specific License authorizes use of the Software on any CPU, on any system, and by any user, without limitation as to quantity or location for Project \_\_\_\_\_.

#### Enterprise Wide License

The Enterprise Wide License authorizes use of the Software on any CPU, on any system, and by any user within the "Enterprise", as such term is defined in the applicable order, without limitation as to the quantity or location or project.

### **3. No Subsequent, Unilateral Modification of Terms by Supplier ("Shrink Wrap")**

Notwithstanding any other provision or other unilateral license terms which may be issued by Supplier after the Effective Date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order for Software licensed under this Contract, or the fact that such other agreement may be affixed to or accompany Software upon delivery ("shrink wrap"), the terms and conditions set forth herein shall supersede and govern licensing and delivery of all products and services provided under this Contract.

## **B. Delivery and Installation**

### **1. Scheduling**

Supplier shall deliver Software and perform the Services according to the delivery dates set forth on the appropriate order or SOW.

### **2. Installation of Software**

#### a) Supplier Installation of Software

Supplier is required to install the Software in accordance with the installation schedule set forth on the order. Supplier shall conduct its standard appropriate diagnostic evaluation at the Authorized User's user site to determine that the Software is properly installed and fully ready for productive use, and shall supply the Authorized User with a copy of the results of the diagnostic evaluation promptly after completion of installation.

Supplier agrees that failure to install the Software in accordance with the delivery schedule in the applicable order shall constitute a material breach of this Contract resulting in damages to the Authorized User. As an estimate of the damages such Authorized User shall suffer, Supplier agrees to credit such Authorized User an amount equal to two percent (2%) of the total license fee, for each day of undelivered or delivered but non-operational Software for a period of thirty (30) days following the agreed upon delivery date. If the delay lasts longer than thirty (30) days, such Authorized User may immediately cancel the order and collect the damages for that period of late delivery. Such Authorized User reserves any and all other remedies available at law or in equity for delays lasting longer than thirty (30) days or for non-delivery.

#### b) Authorized User Installation of Software

If an Authorized User elects to install the Software itself or to contract with a third party to perform installation services, the Software shall be deemed to be installed when all programs, program libraries and user interfaces are copied to and initialized on the appropriate equipment as executable by having the ordering Authorized User, its Agent, or its third party installer invoke the primary function of each major component of the Software or when Acceptance criteria have been met. Authorized User shall provide to Supplier written notice of Acceptance upon completion of installation and successful Acceptance testing.

### **3. Documentation of Software Configuration**

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

## **C. Acceptance and Cure Period**

### **1. Acceptance**

Software shall be deemed accepted when the Authorized User determines that such Software successfully operates in accordance with the Requirements. Such Authorized User agrees to commence Acceptance testing within five (5) business days after receipt of the Software, or within such other period as set forth in the applicable order, after receipt of the Software. Acceptance testing will be no longer than ten (10) business days, or such longer period as may be agreed in writing between Authorized User and Supplier, for the first instance of each product type set forth in Exhibit D of this Contract. Supplier agrees to provide to such Authorized User such assistance and advice as such Authorized User may reasonably require, at no additional cost, during such Acceptance testing, other than travel expenses pre-approved by the Authorized User which will be reimbursable by such Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts (<http://www.doa.virginia.gov/>, or a successor URL(s)). Authorized User shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing. Should Authorized User fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) days following the Acceptance testing period, the Software shall be deemed Accepted.

### **2. Cure Period**

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

## **D. Warranty Services**

At any time during the Warranty Period of twelve (12) months after Acceptance, Supplier shall provide the following warranty services (including unlimited telephonic support and all necessary travel and labor) without additional charge to any Authorized User to maintain the Software in accordance with the Requirements:

### **1. Known Defects**

Promptly notify all Authorized Users of any defects or malfunctions in the Software or Documentation of which it learns from any source other than an Authorized User and provide to all Authorized Users a correction of any such defects or malfunctions, or a work around until a correction is available, within sixty (60) days of Supplier's knowledge of such defect or malfunction.

### **2. Coverage**

24 hours per day, 7 days per week and 365 days per year (24x7x365), including Commonwealth Holidays, Supplier will provide to any Authorized Users all reasonably

necessary telephone or written consultation requested by such Authorized Users in connection with use, problems and operation of the Software.

### **3. Service Levels**

Respond to problems with the Software identified by an Authorized User in no more than one (1) hour after notification. Resolve all problems according to the following:

- i). Priority 1 (Software inoperable) within six (6) hours
- ii). Priority 2 (certain processing interrupted or malfunctioning but Software able to process) within twenty four (24) hours
- iii). Priority 3 (minor intermittent malfunctioning, Software able to process data) within three (3) days.

The level of severity (e.g., 1, 2, 3), shall be defined by such Authorized User.

### **4. Remedies**

If Supplier is unable to make the Software conform, in all material respects, to the Requirements within thirty (30) days following written notification by an Authorized User, Supplier shall, at such Authorized User's request, cancel the license to such Software, accept return of such Software and Documentation, if applicable, rendered unusable, and return all monies paid by such Authorized User for the non-conforming Software and Documentation and such other related Service(s) rendered unusable.

Supplier agrees that failure to make the Software conform, in all material respects, to the Requirements within ten (10) days following notification by an Authorized User shall constitute a material breach of this Contract resulting in damages to the Authorized User. As an estimate of the damages such Authorized User shall suffer, Supplier agrees to credit such Authorized User an amount equal to two percent (2%) of the total license fee, for each day that the Software is non-conforming, for a period of up to thirty (30) days. If after such thirty (30) day period Supplier is unable to make the Software conform, Supplier shall, at such Authorized User's request, cancel the license to such Software, accept return of the Software and Documentation, if applicable, and return all monies paid for the non-conforming Software and Documentation. Such Authorized User reserves any and all other remedies available at law or in equity for delays lasting longer than thirty (30) days.

## **E. Maintenance Services**

Supplier shall provide Maintenance Services during the Maintenance Period at the prices identified in Exhibit D of this Contract without additional charge to maintain the Software in accordance with the Requirements and to provide upgrades, updates, and new releases as they are made generally available.

The prices identified in Exhibit D of this Contract are inclusive of all necessary labor and, unless otherwise provided therein, all necessary travel. Should travel not be included in the prices identified in Exhibit D of this Contract, any travel expense must be pre-approved by the Authorized User and shall be reimbursed in accordance with the then-current per diem rates established by the Virginia Department of Accounts at (<http://www.doa.virginia.gov> or a successor URL(s)).

In addition to the minimum Maintenance Services described in this Section, Exhibit E of this Contract provides detailed descriptions of Supplier's additional maintenance offerings, if any, and Supplier's associated responsibilities as well as remedies available to the Authorized User in the event Supplier fails to perform its maintenance obligations. Any monetary remedies shall be paid to the Authorized User on a quarterly basis. Exhibit E of this Contract defines coverage periods, response times, and restore times.

### **1. Ordering**

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

- i). Software product and number of units for which Maintenance Services shall be provided,
- ii). Maintenance Level to be provided, and
- iii). Maintenance Period for Software Maintenance.

Authorized User may elect, at any time, an alternate 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.

Unless otherwise agreed by the Authorized User and Supplier, the Maintenance Period for a unit of Software shall be one (1) year from the effective date of any executed order for Maintenance on such Software product. Co-termination of Maintenance Periods, TBD based on Supplier proposal.]

## **2. Renewal**

Not less than sixty (60) days prior to the expiration of the Maintenance Period for each unit of Software, 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 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 Fees and Charges section, in effect at the time, whichever is less. Termination of this Contract or cancellation of Maintenance Services by an Authorized User shall not affect this Contract or the grant of any license.

## **3. Services**

At a minimum, Maintenance Services shall include the following:

### **a) Known Defects**

Supplier's offerings and responsibilities related to known defects in the Software are described in Exhibit A

### **b) New Releases**

Supplier's offerings and responsibilities related to new releases of the Software are described in Exhibit A.

### **c) Coverage**

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

### **d) Service Levels**

Supplier's offerings and responsibilities related to response and restore times for any problems with the Software identified by an Authorized User, and any associated remedies are described in Exhibit E.

### **e) Additional Maintenance Services**

Supplier's additional Maintenance Service offerings are described in Exhibit E of this Contract.

## **4. Software Evolution**

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

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

If Supplier or Software Publisher releases an option, future Software product or other release that has substantially the same functionality as the Software products provided under this

Contract, and Software Publisher and/or Supplier ceases to provide maintenance for the older Software product, then Supplier shall offer the Commonwealth or the Authorized User the option to exchange licenses for such replacement Software product or function at no additional charge.

**5. Maintenance Services Remedies**

In addition to any remedies described elsewhere in this Contract, if Supplier is unable to make the Software conform, in all material respects, to the Requirements within thirty (30) days following notification by an Authorized User, Supplier shall, at such Authorized User's request, accept cancellation of the license to such non-conforming software and (i) return all monies paid by such Authorized User for the cancelled license, pro-rated using the straight-line method for an estimated software life cycle of five (5) years, or, if a term license, shall return the prorated license fee for the remainder of the license term; and (ii) return the prorated maintenance charge for the remainder of the maintenance term. The prorated amount due an Authorized User shall be calculated from the date on which the Software ceased operating in accordance with the Requirements.

**F. General Warranty**

Supplier warrants and represents to VITA the Software described in Exhibit D of this Contract as follows:

**1. Ownership**

Supplier is the owner of the Software or otherwise has the right to grant the license to use the Software granted hereunder without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.

**2. Software and Documentation**

Supplier warrants the following with respect to the Software:

- i). The Software is pursuant to a particular Request for Proposal ("RFP"), and therefore, such Software shall be fit for the particular purposes specified by VITA, and Supplier is possessed of superior knowledge with respect to the Software and is aware that all Authorized Users are relying on Supplier's skill and judgment in providing the Software;
- ii). If the RFP specified or Exhibit D of this Contract specifies the hardware equipment an Authorized User shall use to run the Software, then Supplier warrants the Software, and any subsequent release, is compatible with and shall perform as stated with such hardware for a period of ten (10) years of the Effective Date. However Supplier will in no event be liable for the failure of Software if such failure is due to changes in the hardware or use of third party software by an Authorized User.
- iii). If an order issued by an Authorized User pursuant to this Contract specified the hardware equipment such Authorized User shall use to run the Software, then Supplier warrants the Software, and any subsequent release, is compatible with and shall perform as stated with such hardware for a period of ten (10) years of the date of such order. However Supplier will in no event be liable for the failure of Software if such failure is due to changes in the hardware or use of third party software by such Authorized User.
- iv). The Software provided hereunder is at the current release level unless an Authorized User specifies an older version in its order, in which case item (iii) shall not apply and the older version of the Software, and any subsequent release, is compatible with and shall perform as stated with any hardware specified in the applicable order for a period of ten (10) years of the date of such order;
- v). No corrections, workarounds or future Software releases provided by Supplier under the warranty provisions or under maintenance or support services shall degrade the Software, cause any other warranty to be breached, or require an Authorized User to acquire additional hardware equipment or software;
- vi). Supplier warrants that the Documentation and all modifications or amendments thereto which Supplier is required to provide under this Contract shall be sufficient in detail and

content to allow an Authorized User to operate the Software without reference to any other materials or information.

**3. Limited Warranty**

During the warranty period of twelve (12) months, or as specified in the applicable order, Supplier warrants that the Software shall meet or exceed the Requirements. Supplier shall correct, at no additional cost to any Authorized User, all errors identified during the warranty period that result in a failure of the Software to meet the Requirements.

**4. Malicious Code**

Supplier has used its best efforts through quality assurance procedures to ensure that there are no Computer Viruses or undocumented features in the Software at the time of delivery to an Authorized User. Supplier warrants that the Software does not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any Authorized User's use of the Software. Notwithstanding any rights granted under this Contract or at law, Supplier hereby waives under any and all circumstances any right it may have or may hereafter have to exercise Electronic Self-Help. Supplier agrees an Authorized User may pursue all remedies provided under law in the event of a breach or threatened breach of this Section, including injunctive or other equitable relief.

**5. Open Source**

Supplier will notify all Authorized Users if the Software contains any Open Source code and identify the specific Open Source License that applies to any embedded code dependent on Open Source code, provided by Supplier under this Contract.

**6. Supplier's Viability**

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

**7. Supplier's Past Experience**

Supplier warrants that the Software has been installed and is operating in a production environment in a non-related third party's facility without significant problems due to the Software or Supplier.

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

**G. Training and Documentation**

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

Supplier shall deliver to the Authorized User, one (1) complete hard copy or electronic media of Documentation, as requested by such Authorized User. Authorized User shall have the right, as part of the license granted herein, to make as many additional copies of the Documentation, in whole or in part, for its own use as required. This Documentation shall include, but not be limited to, overview descriptions of all major functions, detailed step-by-step installation and operating procedures for each screen and activity, and technical reference manuals. Authorized User shall have the right, as part of the license granted herein, at its own discretion, to take all or portions of the Documentation, modify or completely customize it in support of the authorized use of the Software and may duplicate such Documentation and include it in an Authorized User document or platform. Authorized User shall continue to include Supplier's copyright notice.

#### **H. Reproduction Rights**

At an Authorized User's request, Supplier shall provide the Authorized User with a reproducible diskette or CD. Such Authorized User shall be responsible for making copies and distributing the Software as required. Within thirty (30) days of the end of each calendar quarter, such Authorized User shall provide to Supplier a report of the net number of additional copies of the Software deployed during the quarter. Supplier shall invoice such Authorized User for the net number of new licenses reported as deployed.

#### **I. Evaluation Copy of Software**

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

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

[Reserved]

### **20. SERVICES (NON-MAINTENANCE)-SPECIFIC PROVISIONS**

#### **A. Services**

##### **1. Nature of Services and Engagement**

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

By operation of this Contract, any order or SOW resulting in a commitment of any individual employee or contractor of Supplier, whether employed by Supplier or a contractor or subcontractor of Supplier, for more than one thousand (1,000) hours of work during any six (6) month period or of any such individual employee or contractor for more than eight (8) months in any twelve (12) month period shall be voidable by VITA, in its sole discretion. If an SOW is voided by VITA, such SOW shall no longer be binding on either Party and all obligations with respect to such SOW shall expire.

##### **2. Acceptance**

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

Authorized User shall commence Acceptance testing within five (5) business days, or within such other period as set forth in the applicable SOW, after receipt of the Service.

Acceptance testing will be no longer than ten (10) business days, or such longer period as may be agreed in writing between Authorized User and Supplier, for each Deliverable or for the first instance of each Service type set forth in Exhibit D of this Contract. Supplier agrees to provide to the Authorized User such assistance and advice as the Authorized User may reasonably require, at no additional cost, during such Acceptance testing. Authorized User shall provide to Supplier written notice of Acceptance upon completion of installation and successful Acceptance testing. Should Authorized User fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) days following the Acceptance testing period, the Service shall be deemed Accepted.

##### **3. Cure Period**

Supplier shall correct any non-conformities identified during Acceptance testing and re-submit such non-conforming Service for re-testing within seven (7) days of the appropriate Authorized User's written notice of non-conformance, or as otherwise agreed between such Authorized User and Supplier in the applicable SOW. Should Supplier fail to cure the non-conformity or deliver a Service which meets the Requirements, the Authorized User may, in

its sole discretion: (i) reject the Service in its entirety, and any Service rendered unusable due to the non-conforming Service, and recover amounts previously paid hereunder for all such Services; (ii) issue a "partial Acceptance" of the Service with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Service while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of a Service to meet, in all material respects, the Requirements after the second set of acceptance tests may constitute a default by Supplier. In the event of such default, the Authorized User may, at its sole discretion, terminate its order or SOW, in whole or in part, for the Services to be provided thereunder by Supplier.

**B. General Warranty**

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

**1. Ownership**

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

**2. Supplier's Viability**

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

**3. Supplier's Past Experience**

Supplier warrants that the Services have been successfully performed for a non-related third-party without significant problems due to the Services or Supplier.

**4. Performance**

- i). All Services shall be performed with care, skill and diligence, consistent with or above applicable professional standards currently recognized in its profession, and Supplier shall be responsible for the professional quality, technical accuracy, completeness and coordination of all plans, information, specifications, Deliverables and Services furnished under this Contract;
- ii). Services pursuant to a particular Request for Proposal ("RFP"), quote, or Request for Quote (RFQ), and any associated Deliverables shall be fit for the particular purposes specified by VITA in the RFP and in this Contract and, if applicable, by the Authorized User requesting such quote or issuing such RFQ, and Supplier is possessed of superior knowledge with respect to the Services and Deliverables and is aware that all Authorized Users are relying on Supplier's skill and judgment in providing the Services and Deliverables;
- iii). The documentation which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow a user to understand and fully utilize the Deliverables without reference to any other materials or information.

**5. Malicious Code**

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

**6. Limited Warranty Period and Remedy**

During the warranty period of ninety (90) days, twelve (12) months, or as specified in the applicable SOW, Supplier warrants that the Services shall meet or exceed the Requirements. Supplier shall correct, at no additional cost to any Authorized User, all errors identified during the warranty period that result in a failure of the Services to meet the Requirements. If Supplier is unable to make the Service/Deliverable conform, in all material respects, to the Requirements within ten (10) days following written notification by an Authorized User,

Supplier shall, at such Authorized User's request, accept return of such Deliverable and any other related Deliverable(s) rendered unusable, and return all monies paid by such Authorized User for the non-conforming Services and Deliverable and such other related Deliverable(s) rendered unusable.

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

**C. Training and Documentation**

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

**21. GENERAL PROVISIONS**

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

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

**B. Incorporated Contractual Provisions**

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

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

The then-current contractual provisions at the following URL are required contractual provisions, required by law or by VITA, that apply to all orders placed under this Contract that are partially or wholly funded by the American Recovery and Reinvestment Act of 2009 (ARRA) and are hereby incorporated by reference: [http://www.vita.virginia.gov/uploadedFiles/SCM/ARRA\\_Ts\\_and\\_Cs.pdf](http://www.vita.virginia.gov/uploadedFiles/SCM/ARRA_Ts_and_Cs.pdf)

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

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

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

**D. Governing Law**

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

**E. Dispute Resolution**

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

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

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

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

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

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

**G. Notices**

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

**H. No Waiver**

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

**I. Assignment**

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

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

**J. Captions**

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

**K. Severability**

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

**L. Survival**

The applicable provisions of this Contract regarding Software License, Rights to Work Product, Warranties, Maintenance Services, Escrow, Confidentiality, and Liability and Indemnification, and the General Provisions shall survive the expiration or termination of this Contract.

**M. Force Majeure**

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

**N. Remedies**

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

**O. Right to Audit**

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

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

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

**P. Contract Administration**

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

**Q. Entire Contract**

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

- i). Exhibit A Request for Proposal
- ii). Exhibit B reserved
- iii). Exhibit C EULA Agreement
- iv). Exhibit D Product Price List

- v). Exhibit E Warranty, Maintenance and Support Service Level Agreements (SLAs)
- vi). Exhibit F Certification Regarding Lobbying

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

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

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

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

**Supplier**

By: 

(Signature)

Name: Ann M. Kerwick

(Print)

Title: Director, Government Contracts

Date: October 21, 2010

**VITA**

By: 

(Signature)

Name: Samuel Nixon Jr

(Print)

Title: CIO

Date: 11/8/10

Address for Notice:

Eastman Kodak Company

343 State St.

Rochester, NY 14650-0558

Attention: Government Contracts

Email: ann.kerwick@kodak.com

Address for Notice:

11751 MEADOWVILLE LN

CHESTER VA 23826

Attention: Contract Administrator

## EXHIBIT A

### Responses from Eastman Kodak to VITA's specific proposal questions (Table 2)

#### A. General

	Requirements	A	B
1.	As stated in section 2N (Evaluation Factors) you agreed that your company can sell/service the entire Commonwealth of Virginia. Please describe the details on how this will be accomplished.	<b>Y (filled in by VITA)</b>	<i>Kodak will provide sales support to the entire Commonwealth of Virginia. In certain outlying service areas, Kodak may choose to provide service through a Kodak authorized channel partner provider.</i>
2.	As stated in section 2N (Evaluation Factors) you agreed that your company can sell/service the entire Commonwealth of Virginia. Will you be incorporating subcontractors or alliances? If yes, please describe.	Y	<i>Kodak will provide sales support to the entire Commonwealth of Virginia. In certain outlying service areas, Kodak may choose to provide service through a Kodak authorized channel partner provider. For specific accessories, Kodak may utilize the manufacturers' maintenance service team.</i>
3.	Does your proposed equipment meet the current U.S. Environmental Protection Agency's and Department of Energy's Energy Star guidelines?  If no, please explain.	N	<i>Since 1992, Kodak has been an Energy Star partner with the EPA and is committed to improving the energy efficiency of products. The Kodak systems proposed in this RFP include a power down mode and a sleep mode when the system is not in use.</i>
4.	Does your proposed solution offer anything else that addresses Green issues (i.e. toner recycle, disposal of machines that have come to end of life). If so, please describe.	Y	<i>Kodak has a recycle program for many components and a disposal plan for products at end of life. Further Sustainable and Green initiatives are outlined in greater detail in the following pages.</i>
5.	Does your proposed solution offer 8:00 am – 5:00 pm EST Hardware and Software support? Please provide details	Y	<i>Normal onsite and phone support is provided 8 am – 5 pm EST for both hardware and software. After hours support is also available, as needed.</i>
6.	Does your proposed solution have the ability to process P-Cards from Authorized Users that may have multiple agreements and assign the payment to the correct agreement?  If so, please describe.	N	<i>Kodak's current accounting practices do not include the ability to accept P-Card purchases. In the future, if the volume of purchases increases, Kodak will consider changing our accounting practices...</i>

7.	Does your proposed solution include a system that maintains data for each agreement such as starting date of agreement, ending date, payment dates, equipment pickup date, etc.?  If so, please describe.	Y	<i>Records are maintained for each installation that include start date and end date of agreement, and payment schedules. Information can be provided on a case by case basis as requested.</i>
8.	Does your proposed solution provide leasing as an option? If so, please provide your leasing documents in Microsoft Word format and place files on CD #3.	Y	<i>Kodak is proposing to offer leasing on a case by case basis. Leasing documents are provided as required by the RFP. Please see leasing information included in our Section 7 response...</i>
9.	Does your proposed solution have a process for notifying Authorized Users when their lease agreements are complete?  If so, please describe	Y	<i>The authorized users will receive monthly invoices that indicate the total lease term and the month being billed.</i>
10.	Does your proposed solution have a process once an Authorized User informs you that they do not wish to keep the equipment once they have fulfilled their leasing agreement? (Scheduling of pickup, etc.)  If so, please describe.	Y	<i>Kodak's has an implementation team who will work with the authorized user to schedule installation and de-installation of the equipment.</i>
11.	Does your proposed solution provide the ability for Authorized Users to trade-in devices for credit against new purchase/lease agreements? If so, please describe.	Y	<i>Trade-in credit can be applied to the purchase of new equipment, whether purchased or leased.</i>

## B. Business Capabilities

	<i>Requirements</i>	<i>A</i>	<i>B</i>
1.	Does your proposed solution outline the type of sales process you will be using to ensure that the right production product is being proposed to the Commonwealth of Virginia?  If so, please describe.	Y	<i>Due to the unique capabilities and applications of the Kodak equipment proposed, the sales process will include in-depth individual meetings with users, purchasers and IT personnel. Proposed equipment will be demonstrated when necessary to all personnel involved. Current and future applications will be reviewed thoroughly in order to propose the correct solution.</i>
2.	Has your company won any awards or recognition in the high speed production area? If so, please describe.	Y	<i>Press releases of recent awards are made part of the Kodak proposal in the Appendices.</i>
3.	Does your proposed solution include how many service technicians are trained to	Y	<i>Eastman Kodak employs 25 technicians for the Graphic Communications Group in the</i>

	<i>Requirements</i>	<i>A</i>	<i>B</i>
	support high speed devices for this contract? If so, please describe and furnish certifications as applicable.		<i>Commonwealth of Virginia.</i>
4.	Has your company implemented any high speed production projects that meet or exceed the requirements of this RFP within the last six months	Y	<i>Kodak has delivered more than fifty production systems in the past six months.</i>
5.	In your proposed solution, does your company maintain a specific amount of supplies/parts at your locations? If so, please describe.	Y	<i>Local field engineers maintain a large percentage of parts in their trunk stock. Other items are ordered and shipped from two different locations within the US. Some parts may be maintained onsite at install locations.</i>
6.	Does your proposed solution have an in-house order tracking system that can be accessed 24x7 by a user? Please provide details.	N	<i>Equipment orders are placed through the Kodak ordering system. Individual contact can be made to confirm delivery and installation data; however, no on-line order tracking system can be accessed 24x7 by a user.</i>
7.	Is your firm willing to commit to service level agreements? If so, please refer to Appendix A and fill in the yellow shaded areas.	Y	<i>Service Level Agreements are made part of Appendix A as requested.</i>
8.	Does your proposed solution include any marketing abilities 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.	Y	<i>Due to the unique capabilities and applications of the Kodak equipment proposed, marketing will occur with each individual department with face to face meetings. Group demonstrations will be established if awarded to Kodak. Additional marketing includes e-newsletters, addition of Commonwealth contract to Kodak website and working with Government, K-12, University and non-Executive Branch state agency associations.</i>
9.	Does your proposed 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.	Y	<i>Kodak maintains internal database that provides all records associated with equipment installation, i.e. installation, location, beginning/end lease dates, serial #s, location, etc. These records can be provided to any and all Authorized Users as requested.</i>

**C. Security**

C.	Requirements	A	B
1.	<p>If the unit has a hard drive, will Supplier comply with 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><a href="http://www.vita.virginia.gov/docs/psg/SMS_COV_ITRM_Std_SEC2003-02-1-f-eff-030804.pdf">http://www.vita.virginia.gov/docs/psg/SMS_COV_ITRM_Std_SEC2003-02-1-f-eff-030804.pdf</a>). If so, please describe.</p>	Y	<p><i>Eastman Kodak will comply with the "Statement of ITRM Requirements for the Removal of Commonwealth Data from Electronic Media" from VITA's Security Policy. Eastman Kodak will use one of the three acceptable methods for hard drive data removal.</i></p>
2.	<p>If the unit 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><i>Page buffer is emptied once job printing is complete.</i></p>

**D. Reports**

D.	Requirements	A	B
1.	<p>Will your proposed solution include an electronic service log that is available to customers on specific copiers/printers? (provide examples)</p>	Y	<p><i>Each printer has parts usage and historical service data available to end users. Quarterly service reports will be analyzed and shared with Authorized Users by Kodak Sales and Service.</i></p>
2.	<p>Will your proposed solution include any additional reports that would be an added value to the Commonwealth? Please describe and provide examples.</p>	Y	<p><i>Additional reports include volumes in order to track peak and low cycles and for our NexPress product line, Kodak provides a quarterly calculation of total cost per page and consumables used.</i></p>

## APPENDICES

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### **KODAK NEXPRESS SE Class and DIGIMASTER EX Series Earn Editor's Choice Award from Better Buys for Business**

#### **Better Buys for Business praises performance, value of KODAK Digital Print Solutions**

Rochester, N.Y., July 12— Better Buys for Business recognized the KODAK NEXPRESS SE Platform and the KODAK DIGIMASTER EX Digital Production Systems each with an Editor's Choice Award in their annual review of digital printers. The Digimaster system has earned the BBB Editor's Choice award multiple times over the last several years. The leading independent authority of office imaging equipment called the KODAK NEXPRESS SE Platform "an indication of how the digital printing world is making a serious challenge to at least part of the gigantic offset printing market" and the KODAK DIGIMASTER EX Systems "an impressive on-demand printer series that has great appeal for high volume printer buyers."

Better Buys for Business evaluates hundreds of models of copiers, printers, faxes and scanners from all major manufacturers when selecting award recipients, but only one or two from each category achieve Editor's Choice status, a designation for those products that provide the best performance and represent the best value.

"The Editor's Choice Award reflects Kodak's commitment to providing the highest quality digital color and black and white systems to our customers," said Chuck Hura, Worldwide Product Manager, Digital Printing Solutions, Kodak's Graphic Communications Group. "Our innovative digital print solutions provide the speed, flexibility, and value necessary to help our customers embrace new opportunities and grow their business."

According to Better Buys for Business, the NEXPRESS SE Presses "are impressive machines... especially with the addition of gloss optimization, enhanced color gamut, and texturing."

The KODAK NEXPRESS SE Digital Production Color Platform with Print Genius provides customers more options and ways to utilize applications that generate higher margin. Delivering ground breaking productivity, quality and reliability, user's can increase their top and bottom lines. Customers are able to upgrade presses as they grow their businesses with options to select desired paper capacity, increase processing capability, and add a fifth imaging unit for delivery of spot color, watermarking, MICR secure printing, and protective coating with the PIA InterTech Award winning KODAK NEXPRESS Fifth Imaging Unit Solutions. The fifth imaging unit solutions also enable high impact glossing in conjunction with the KODAK NEXPRESS Glossing Unit and the PIA InterTech Award-winning KODAK NEXPRESS Intelligent Dimensional Coating and KODAK NEXPRESS Dimensional Clear Dry Ink, which combine to create raised printing that enables tactile effects so that images can have a dimensional feel that mimics the surface of the items in the image.

*Better Buys for Business* states the DIGIMASTER EX Series' "platform is a versatile, speedy way for customers to add high-volume production printing capabilities." The KODAK DIGIMASTER EX Digital Production System builds upon the proven quality, performance, productivity, and flexibility of Kodak's award winning DIGIMASTER Technology to address the demanding needs of print buyers for faster turnaround time, new and creative print on demand documents with quality and sophisticated finishing.

The Digimaster models provide for software and finishing capability that allows the system to function seamlessly

in a range of Printing, Publishing or Transactional environments.

DIGIMASTER EX Digital Production System comes in five speeds EX110 (110 ipm), EX125 (125 ipm), EX138 (138 ipm)—a speed model to address a critical production space—EX150 (150 ipm) and EX300 (300 ipm). DIGIMASTER EX system also offers an optional extended paper supply, which holds 4,000 sheets of large format sheets in all three paper drawers, roll feed attachment directly to the print engine for transaction and /or high volume printing, and a flat panel monitor with adjustable swing, tilt and swivel capability for optimal user viewing.

KODAK Products are backed by KODAK Service and Support. KODAK Service and Support is made up of more than 3,000 professionals in 120 countries. It is a leading multi-vendor integrated services provider, delivering consulting, installation, maintenance and support services for commercial printing, graphic communications, document imaging, data storage and retail industries. KODAK Service and Support professionals are uniquely qualified to provide services that control costs, maximize productivity, and minimize business risk.

## **KODAK Digital Printing Solutions Earn Five International Awards from IAPHC – The Gallery of Superb Printing**

ROCHESTER, N.Y., Jan. 26—Demonstrating the added value that the KODAK NEXPRESS Dimensional Printing System brings to a wide range of print products, five entries printed on KODAK NEXPRESS Digital Production Color Presses received awards from the International Association of Printing House Craftsmen (IAPHC). The KODAK NEXPRESS Dimensional Printing helps printers deliver unique services with greater value that set them apart from their competition.

The Gallery of Superb Printing, presented by IAPHC, honored KODAK Digital Printing Solutions with two Gold, two Silver and one Bronze award. The IAPHC awards celebrate outstanding achievement in the art and science of printing and related graphic arts, and are recognized globally as one of the graphic arts industry's highest honors.

The five awards KODAK Digital Printing Solutions earned in the 35<sup>th</sup> International Gallery include:

- Gold Award - Bauble Postcard with KODAK NEXPRESS Dimensional Clear Dry Ink
- Gold Award - Catch New Opportunities (Lizard) Postcard with KODAK NEXPRESS Dimensional Clear Dry Ink
- Silver Award - KODAK NEXPRESS Intelligent Solutions, Unlock New Profit Potential
- Silver Award - KODAK NEXPRESS Dimensional Printing System, Sample
- Bronze Award - Meet Stream Technology: Offset Class Output

“These awards recognize the outstanding quality of NEXPRESS Press output and the added value Dimensional Printing brings to digitally printed work. This unique application allows customers to drive new revenue opportunities and increase their clients' return on marketing investment,” said Kevin Joyce, Worldwide Vice President, Sales and Marketing, Digital Printing Solutions, Kodak. “Kodak is committed to delivering innovative digital solutions that help our customers grow their business, and we are honored to be recognized by such a prestigious organization.”

Entries are judged by several panels of international printing experts. Judges evaluate quality and difficulty of the graphic arts processes used, ranging from ink coverage, intensity of solids, registration, dot structure, paper usage, binding, finishing, degree of difficulty, overall visual appearance and effective communication. Entries must pass three rounds of judging to be eligible for the Best of the Best awards, awarded in 2010.

The IAPHC is an international organization dedicated to individuals in the printing and graphic arts industry. The IAPHC's pledge is to educate, promote, inform, and connect members and the global graphic community, fostering their growth and success.

Winner of a 2009 PIA InterTech Technology Award, the KODAK NEXPRESS Dimensional Printing System creates raised—or 3D—text and images to differentiate and add impact to a printed piece. It is the only cut sheet inline digital, tactile printing system on the market, and is available as part of the KODAK NEXPRESS Fifth Imaging Unit Solutions. Dimensional Printing is well suited for a variety of markets, including commercial printing and photo products, and can be used for a variety of applications including direct mail, marketing collateral, promotional materials, greeting cards, business cards, invitations, certificates and photo books. For more information on KODAK Dimensional Printing Solutions, visit: [www.kodak.com/go/dimensional](http://www.kodak.com/go/dimensional).

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data storage and retail industries. KODAK Service and Support professionals are uniquely qualified to provide services that control costs, maximize productivity, and minimize business risk.

## **KODAK NEXPRESS Press Scoops Prestigious Prize at EDP Awards**

LA HULPE, Belgium, June 8—Kodak has maintained its tradition for landing top industry accolades after winning a coveted EDP Association Award. The company scooped the "Best Production Cut-Sheet Colour (High Production) Award" for its KODAK NEXPRESS SE3600 Digital Color Production Press.

The KODAK NEXPRESS SE Digital Color Platform delivers market leading digital color productivity for commercial, photo and in-plant printers, and surpasses offset. It builds on the proven reputation of Kodak's NEXPRESS Product family, and represents the next generation in color quality, performance and reliability.

The NEXPRESS SE3600 Press is the only 5-color sheetfed digital production color press to offer 3,600 A3++ (356 x 520mm) sheets per hour and 120 ppm performance. The system enables print service providers to produce unique applications, helping them to differentiate themselves from their competitors and drive profits.

The EDP Association is a non-profit organization that recognizes the latest innovations in the digital print industry. The EDP Association Awards acknowledge best-in-class products across the digital print landscape. EDP Association accolades are awarded following a rigorous assessment by the organization's independent panel of digital print experts.

Gregory Gresock, Future Product Marketing Manager, Electrophotographic Printing Solutions at Kodak comments: "It's always a great honour to receive an accolade awarded by our peers in the print industry. The award underlines our commitment to research and development and to helping our customers improve the way they work.

"Our family of NEXPRESS Products delivers significant gains in performance, including outstanding flexibility, productivity and image quality. The system is particularly well suited to print service providers in the commercial printing and photo products markets, and enables them to boost print volume and grow their businesses."

The EDP Gala Awards 2010 were held at the NEC on Friday 21 May at 3pm. For more information on the EDP Association and its award ceremony, go to [www.edpassociation.com](http://www.edpassociation.com).

## **KODAK PROSPER 5000XL Press Receives International Forum Design iF Product Design Award 2010**

ROCHESTER, N.Y., Apr. 14—The KODAK PROSPER 5000XL Press, known for bringing innovative continuous inkjet technology to a range of commercial printing applications, is also being recognized for its achievement in overall industrial product design. The PROSPER 5000XL Press was recognized as one of 778 winners of a prestigious iF Product Design Award 2010, standing out in the annual International Forum (iF) Design competition that drew manufacturers from 39 different countries with more than 2,400 product designs.

“The attributes of the PROSPER Press extend far beyond the game-changing imaging technology and include the overall product design,” said Isidre Rosello, General Manager, Digital Printing Solutions and Vice President, Eastman Kodak Company. “As we designed the PROSPER Press Platform, we paid a great deal of attention to the usability of the product and how it fits into the production environment of customers. This recognition by a high-profile group of international design experts demonstrates that our commitment to overall excellence with the PROSPER Press Platform has paid off.”

Based on Kodak’s innovative Stream Inkjet Technology, the PROSPER Press produces offset class output in terms of quality, productivity, and cost. It combines the benefits of offset printing with the flexibility of digital printing for books, direct mail, and other printed materials on a range of substrates, including glossy media. For the publishing market, the PROSPER Press significantly increases the quantity of books which can be produced digitally at a lower cost than offset.

Entrants in the iF Product Design Awards are judged on the following design criteria:

- Design quality
- Finish
- Choice of materials
- Degree of innovation
- Environmental impact
- Functionality
- Ergonomics
- Visualization of intended use
- Safety
- Brand value + branding
- Universal design

Known the world over as a “seal of outstanding design,” the iF Product Design Award honors outstanding achievements in design. Winners will be included in the iF Product Design Award Exhibition 2010, which opened on March 2, 2010 and runs until August 2010 in Hannover, Germany. More than 250,000 international visitors will tour the exhibition.

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## **Kodak Honored with Two Top Industry Awards for Digital Innovation in Graphic Communications**

### KODAK NEXPRESS Dimensional Printing System and KODAK PRINERGY Digital Workflow receive 2009 InterTech Awards

ROCHESTER, N.Y., Aug. 13—Printing Industries of America awarded Kodak two 2009 InterTech Technology Awards, the highest honor for innovation in the graphic communications industry. The awards recognize leading KODAK Digital Technologies that help increase the impact of print and enable print service providers to offer even more value to their clients as marketing service providers. Kodak is the only company to receive two of the coveted awards this year.

Receiving 2009 InterTech Technology Awards are the KODAK Dimensional Printing System, a revolutionary digital print technology that creates raised—or 3D—text and images to differentiate and add value to the creative piece, and KODAK PRINERGY Digital Workflow, a software solution for digital presses that enables printers to improve efficiency, decrease production costs and reduce job turnaround times. Kodak holds a total of 24 InterTech Technology Awards for innovative solutions for commercial, data, publishing, and packaging printers.

“KODAK Solutions such as Dimensional Printing and PRINERGY Digital Workflow help customers differentiate their businesses in the marketplace, increase production efficiencies, and improve return on marketing investment for their clients,” said Chris Payne, Director and Vice President, Business to Business Marketing, Kodak. “These awards reflect Kodak’s ongoing commitment to deliver innovative solutions that help our customers grow their businesses.”

The KODAK Dimensional Printing System is the only cut sheet inline digital, tactile printing system on the market. Available as part of the KODAK NEXPRESS Fifth Imaging Unit Solutions, Dimensional Printing gives specified text and images a raised or 3D effect that can help communications stand out in a crowded marketplace. The result is a printed piece with a dimensional feel that mimics the surface of the items in the image. The KODAK NEXPRESS Intelligent Dimensional Coating Solution and KODAK NEXPRESS Dimensional Clear Dry Ink combine to create the Dimensional Printing effects. Dimensional Printing is well suited for a variety of markets, including commercial printing and photo products, and can be used for a variety of applications including direct mail, marketing collateral, promotional materials, greeting cards, business cards, invitations, certificates and photo books.

In his nomination letter for Dimensional Printing, Tony Seaman, Director, The University of Mississippi Publishing Center, lauded the impact Dimensional Printing has had on its business. The university hosted the first 2008 Presidential Debate and used Dimensional Printing to create a raised presidential seal and other elements for the invitations, pocket folders, and sponsor programs.

“We’ve seen an overall growth in our digital printing volume, and we believe the KODAK Dimensional Printing System is certainly contributing to this growth,” said Seaman. “It is opening doors and helping grow our volumes by establishing us as an innovative and dependable partner to our clients. It gives us a competitive advantage and helps us deliver much more than a standard digital print job.”

PRINERGY Digital Workflow is designed specifically for the needs and requirements of digital printing workflows, such as higher job volumes, variable data printing, and short production runs. It connects to a wide range of digital presses on the market.

PRINERGY Digital Workflow’s Rules Based Automation (RBA) feature impressed the judges. The technology eliminates processes, simplifies production, and automates procedures regardless of the level of complexity—all based on establishing

predefined “rules” to determine how to handle all facets of print jobs. Using RBA, many errors are eliminated, touch points disappear, and the process is much faster. This is absolutely critical in today’s digital print production process where the jobs have to be processed as efficiently as possible. When integrated with KODAK Unified Workflow Solutions, zero-touch automation is achieved. Furthermore, PRINERGY Digital Workflow is tightly integrated with KODAK Web to Print Solutions, enabling print service providers to become marketing service providers by giving their customers easy, flexible ways to order marketing printed materials anytime via the Internet.

PRINERGY Digital Workflow is being honored for innovation in the same year that the KODAK PRINERGY Workflow System, the industry’s first production workflow, is celebrating its tenth anniversary.

In nominating PRINERGY Digital Workflow for the 2009 InterTech Award, Yves Gray, Digital Color Printing, ING Belgium, said, “PRINERGY Digital has become a big part of our production environment. It has proven to be very easy to integrate, very easy to use, and very robust. Our operators felt comfortable with the interface right away, and the status reporting and live device feedback are helping us to become much more efficient—saving time and money on each job.”

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#### **About Printing Industries of America**

Printing Industries of America is the world’s largest graphic arts trade association representing an industry with approximately one million employees. It serves the interests of more than 10,000 member companies. Printing Industries of America, along with its affiliates, delivers products and services that enhance the growth, efficiency, and profitability of its members and the industry through advocacy, education, research, and technical information.

Born out of the consolidation of PIA and GATF, Printing Industries of America has a long and impressive history. We are dedicated to the advancement of the graphic communications industry worldwide. Printing Industries proudly hosts two specialty Centers of Excellence—the Center for Technology & Research (formerly GATF) and the Center for Digital Printing Excellence. Both serve our members and the industry with in-depth, quality research, reports, products, services, and more.

#### **About Kodak**

As the world’s foremost imaging innovator, Kodak helps consumers, businesses, and creative professionals unleash the power of pictures and printing to enrich their lives.

To learn more, visit <http://www.kodak.com> and follow our blogs and more at <http://www.kodak.com/go/followus>.

More than 75 million people worldwide manage, share and create photo gifts online at KODAK Gallery—join for free today at [www.kodakgallery.com](http://www.kodakgallery.com)

In the graphic communications market, Kodak offers the broadest portfolio of integrated solutions to help customers grow their business. For more information, visit [www.graphics.kodak.com](http://www.graphics.kodak.com). For downloading photos and videos from Kodak’s image library, visit [www.kodak.com/go/gcimages](http://www.kodak.com/go/gcimages).

(Kodak, Prinergy and NexPress are trademarks of Eastman Kodak Company.)



## EXHIBIT C LICENSE AGREEMENT ADDENDUM

The Virginia Information Technologies Agency (hereinafter referred to as "VITA"), pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia, and Eastman Kodak Company ("Supplier"), a business incorporated in New Jersey, F.E.I.N. 16-0147150, having its principal place of business at 343 State St. Rochester, NY 14650, are this day entering into a contract and, for their mutual convenience, the parties are using the standard form contract ("\_\_\_\_\_") provided by Supplier. This addendum, duly executed by the parties, is attached to and hereby made a part of Supplier's standard form contract and together shall govern the use of any and all Kodak, Microsoft and/or Adobe Software licensed by the Commonwealth under this agreement whether or not specifically referenced in the order document.

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

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

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

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

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

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

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

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

The parties further agree as follows:

30. The contractual provisions at the following URL are mandatory provisions, required by law or by VITA, that are hereby incorporated by reference:  
<http://www.vita.virginia.gov/uploadedFiles/SCM/StatutorilyMandatedTsandCs.pdf>
31. The terms and conditions in documents posted to the aforereferenced URL are subject to change pursuant to action by the legislature of the Commonwealth of Virginia or a change in VITA policy. If a change is made to the terms and conditions, a new effective date will be noted in the document title. Supplier is advised to check the URL periodically.
32. The contractual claims provision §2.2-4363 of the Code of Virginia is also incorporated by reference.
33. The United Nations Convention on Contracts for the International Sale of Goods and all other laws and international treaties or conventions relating to the sale of goods are expressly disclaimed. UCITA shall apply to this contract only to the extent required by §59.1-501.15 of the Code of Virginia.
34. Supplier shall comply with all applicable federal, state, and local laws, regulations, and ordinances.
35. The Commonwealth does not waive its sovereign immunity or its immunity under the Eleventh Amendment.
36. The Commonwealth is tax exempt and shall not be responsible for payment of taxes, duties, or penalties.
37. Supplier warrants that it is the owner of the Software or otherwise has the right to grant to all Authorized Users the license to use the Software granted hereunder without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.
38. Supplier agrees to indemnify, defend and hold harmless the Commonwealth, VITA, any Authorized User, their officers, directors, agents and employees ("Commonwealth's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Commonwealth's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee or subcontractor of Supplier, (ii) any act or omission of any employee or subcontractor of Supplier, (iii) breach of any representation, warranty or covenant of Supplier contained herein, (iv) any defect in the Software, or (v) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Software. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to VITA or the Authorized User against whom the claim has been asserted.
39. Any Authorized User may rely on independent contractors, acting on behalf of such Authorized User, to perform functions requiring the use of and access to the Supplier's Software. Nothing in the Supplier's standard form contract shall limit such third parties' from using or accessing the Software in order to perform such functions. If any invention, work of authorship, or confidential information is developed exclusively by an employee, consultant, contractor, or subcontractor of an Authorized User during the performance of Services by Supplier, Supplier shall have no ownership claim to such invention, work of authorship, or confidential information.

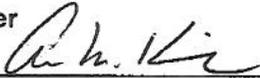
40. Nothing in this contract shall be construed as conveying any rights or interest in Commonwealth or Authorized User data to Supplier.
41. The currency which shall be used for this contract is United States Dollars. Any claim which may arise hereunder shall be settled in United States Dollars.
42. Any travel expenses incurred by Supplier in the course of performing the services must be pre-approved by the appropriate Authorized User and shall be reimbursed at the then-current per diem rates published by the Virginia Department of Accounts.
43. All payment obligations under this contract are subject to the availability of federal, state, and/or local appropriations for this purpose. In the event of non-appropriation of funds for the items under this contract, VITA may terminate, in whole or in part, this contract or any order, for those goods or services for which funds have not been appropriated. This may extend to the renewal of maintenance services for only some of the licenses granted by Supplier. Written notice will be provided to the Supplier as soon as possible after legislative action is completed. There shall be no time limit for termination due to termination for lack of appropriations.
44. An Authorized User may require that Supplier personnel submit to a criminal background check prior to performance of any services under this contract.

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

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

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

**Supplier**

By:   
(Signature)

Name: Ann M. Kerwick  
(Print)

Title: Director, Government Contracts

Date: October 21, 2010

**VITA**

By:   
(Signature)

Name: GREGORY H. SCARLE  
(Print)

Title: STRATEGIC SOURCING SPECIALIST

Date: 11.12.10

Exhibit D RFP 2010-22

SUPPLIER ITEM NUMBER	PRODUCT DESCRIPTION	LIST PRICE	CURRENT GSA DISCOUNT (Percentage Amount)	VITA DISCOUNT (Percentage Amount, should be equal to or greater than GSA Discount)
	<b>HARDWARE</b>			
	<b>High Volume Color Printing (NexPress)</b>			
KCSE2500208V	NXP SE2500 Press 208V	\$ 507,000.00	22%	22%
KCSE3000208V	NXP SE3000 Press 208V	\$ 592,000.00	22%	22%
KCSE3600208V	NXP SE3600 Press 208V	\$ 632,000.00	22%	22%
	<b>Black &amp; White (Digimaster)</b>			
KCBWKAEX11060HZ	Digimaster EX110 60 HZ /KA Bundle	\$ 200,000.00	38%	38%
KCBWKAEX12560HZ	Digimaster EX125 60Hz /KA Bundle	\$ 250,000.00	39%	39%
KCBWKAEX125M60H	Digimaster EX125M 60 Hz /KA Bundle	\$ 275,500.00	37%	37%
KCBWKAEX13860HZ	Digimaster EX138 60Hz /KA Bundle	\$ 315,000.00	49%	49%
KCBWKAEX138M60H	Digimaster EX138 MICR 60H /KA Bundle	\$ 340,000.00	44%	44%
KCBWKAEX15060HZ	Digimaster EX150 60Hz /KA Bundle	\$ 355,000.00	39%	39%
KCBWKAEX150M60H	Digimaster EX150 MICR 60 Hz /KA Bundle	\$ 380,000.00	38%	38%
KCBWKAEX30060HZ	Digimaster EX300 60HZ / KA Bundle	\$ 392,600.00	38%	38%
	<b>High Speed Inkjet (Color)</b>			
KODAKVL2000	VL2000	\$ 1,330,000.00	n/a	28%
KODAKVL2200	VL2200	\$ 2,546,000.00	n/a	28%
KODAKVL4000	VL4000	\$ 1,480,000.00	n/a	28%
KODAKVL4200	VL4200	\$ 2,696,000.00	n/a	28%
KODAKVL6000	VL6000	\$ 2,130,000.00	n/a	28%
KODAKVL6200	VL6200	\$ 4,146,000.00	n/a	28%
KODAKVL700PM1	700 PM premium on VL (2 tower)	\$ 235,000.00	n/a	20%
KODAKVL700PM1	700 PM premium on VL (1 tower)	\$ 170,000.00	n/a	20%
	<b>ACCESSORIES</b>			
	<b>Color (NexPress)</b>			
KH2226600	NXP Glossing Unit	\$ 60,000.00	28%	28%
KH2169400	Watkiss OffLine Booklet Maker Conveyor 115V NXP	\$ 56,600.00	3%	3%
KH2169000	Watkiss InLine Booklet Maker Conveyor 115V NXP	\$ 62,500.00	3%	3%
KH2169600	Watkiss OffLine Booklet Maker ASM Square 115V NXP	\$ 66,500.00	3%	3%
KH2169200	Watkiss InLine Booklet Maker/Spinemaster 115V NXP	\$ 72,500.00	3%	3%
KH2171700	Atlas Copco SF8 Air Supply Syst NXP	\$ 14,500.00	0%	0%
KH2166000	NXP High-Capacity Delivery / Orig Color	\$ 32,000.00	15%	15%

SUPPLIER ITEM		LIST PRICE	CURRENT GSA	VITA DISCOUNT
NUMBER	PRODUCT DESCRIPTION		DISCOUNT (Percentage Amount)	(Percentage Amount, should be equal to or greater than GSA Discount)
KH2166200	NXP 2nd HCD Attach Kit	\$ 350.00	15%	15%
	<b>Black &amp; White (Digimaster)</b>			
KH2180400	Digimaster EX Series Paper Supply Module 60Hz	\$ 18,400.00	15%	15%
KH2179000	Digimaster EX Series Extended PSM 60Hz	\$ 22,000.00	15%	15%
KH2180600	DM EX Series Inserter 60Hz	\$ 33,000.00	24%	24%
KCBWPUNCHER	Digimaster Hole Puncher Bundle	\$ 39,900.00	15%	15%
KCBWKABINDER60H	CP Bourg Perfect Binder 60 Hz Bundle	\$ 73,000.00	10%	10%
KH2244100	Watkiss Powersquare 200	\$95,000.00	4%	4%
KH2178500	DM EX series Roll Feed I/F Kit - ME	\$ 9,750.00	n/a	12%
MU220001500	DM EX series Finisher Bypass	\$ 2,375.00	n/a	41%
KH2226800	Digimaster EX Series Stacker, 60Hz	\$ 34,200.00	n/a	31%
KN000053800	DM Auxiliary PSM Upgrade Kit	\$ 5,000.00	n/a	25%
KC3E3864	DM Stacker Bypass Upgrade Kit	\$ 1,000.00	n/a	40%
KC8369779	DM Stacker Cart	\$ 750.00	n/a	10%
KH2227100	DM Booklet Maker, 60Hz	\$ 48,000.00	n/a	30%
KC8711418	DM External Vent Kit	\$ 750.00	n/a	33%
KC1220185	DM Operator Attention Light	\$ 375.00	n/a	33%
KCA09519	DM Roll Feed Interface Ki t- PSM	\$ 9,750.00	n/a	12%
KCDOCUSHEETERLS	Digimaster Docusheeter LS Roll Feeder	\$ 85,900.00	n/a	3%
KCBWKAE110UPM60	Digimaster EX110 f/U45 PM 60Hz /KA Bundle	\$ 140,000	n/a	20%
KCBWKAE125UPM60	Digimaster E/EX125 f/U45 PM 60Hz /KA Bundle	\$ 130,000	n/a	20%
KCBWKAE138UPM60	Digimaster EX138 f/U45 PM 60Hz /KA Bundle	\$ 115,000	n/a	20%
KCBWKAE150UPM60	Digimaster E/EX150 f/U45 PM 60Hz /KA Bundle	\$ 100,000	n/a	20%
KCBWWGE110UPM60	Digimaster EX110 f/U45 PM 60Hz /WG Bundle	\$ 140,000	n/a	20%
KCBWWGE110XPM60	Digimaster EX110 excU45 PM 60Hz /WG Bundle	\$ 140,000	n/a	20%
KCBWWGE125UPM60	Digimaster E/EX125 f/U45 PM 60Hz /WG Bundle	\$ 130,000	n/a	20%
KCBWWGE125XPM60	Digimaster E/EX125 excU45 PM 60Hz /WG Bundle	\$ 130,000	n/a	20%
KCBWWGE138UPM60	Digimaster EX138 f/U45 PM 60Hz /WG Bundle	\$ 115,000	n/a	20%
KCBWWGE138XPM60	Digimaster EX138 excU45 PM 60Hz /WG Bundle	\$ 115,000	n/a	20%
KCBWWGE150UPM60	Digimaster E/EX150 f/U45 PM 60Hz /WG Bundle	\$ 100,000	n/a	20%
KCBWWGE150XPM60	Digimaster E/EX150 excU45 PM 60Hz /WG Bundle	\$ 100,000	n/a	20%
	<b>SOFTWARE</b>			
KH2218300	SmartBoard 5.0 Monochrome to Monochrome & Color Software/Upgrade from Release 4.0	\$ 1,000.00	0%	0%
KH2212200	SmartBoard Suite 5.0 Black&White/Color Software Upgrade 4	\$ 2,500.00	19%	19%
KH2211900	SmartBoard 5.0 Monochrome/Color Suite Software	\$ 15,000.00	35%	35%

SUPPLIER ITEM NUMBER	PRODUCT DESCRIPTION	LIST PRICE	CURRENT GSA	VITA DISCOUNT
			DISCOUNT (Percentage Amount)	(Percentage Amount, should be equal to or greater than GSA Discount)
KH2187300	CoXist Pro 7.0 (for new installs)	\$ 13,600.00	15%	15%
FusionProBundle1	FusionProBundle1	\$ 1,200.00	0%	0%
KH2141400	NxP Apps Consulting Svc 1 Day	\$ 2,000.00	0%	0%
015-00975A-01	InSite Storefront Software for Prinerger Connect - 20 Customers	\$ 23,000.00	25%	25%
015-00975A-02	InSite Storefront Direct Software - 20 Customers	\$ 26,000.00	25%	25%
015-00975A-03	InSite Storefront Software for Prinerger Evo - 20 Customers	\$ 26,000.00	25%	25%
015-00975A-04	InSite Storefront Software for Prinerger Connect - 5 Customers	\$ 12,000.00	12%	12%
015-00975A-05	InSite Storefront Direct Software - 5 Customers	\$ 15,000.00	15%	15%
015-00975A-06	InSite Storefront Software for Prinerger Evo - 5 Customers	\$ 15,000.00	15%	15%
015-01020A-01	InSite Variable Data Print Software	\$ 2,000.00	0%	0%
632-00625A	InSite Storefront - Add to InSite Prepress Portal Server - 20 Customers	\$ 23,000.00	30%	30%
632-00880A	InSite Storefront - Add to InSite Prepress Portal Server - 5 Customers	\$ 12,000.00	20%	20%
632-00883A	InSite Storefront - Add Unlimited Customers	\$ 50,000.00	25%	25%
017-01008B	Web-Enabled InSite Storefront Direct	\$ 25,000.00	11%	11%
015-00469A-01	InSite Prepress Portal Software for Prinerger - 5 User	\$ 22,000.00	25%	25%
015-00469A-02	InSite Prepress Portal Software for Prinerger 2-User	\$ 12,000.00	12%	12%
015-00469A-03	InSite Prepress Portal Software for Evo 2-User	\$ 12,000.00	12%	12%
015-00469A-04	InSite Prepress Portal Software for Evo 5-User	\$ 21,000.00	24%	24%
015-00670A-01	InSite Prepress Portal Enterprise Software	\$ 41,000.00	25%	25%
639-00068C	Kodak Darwin 2.0 Desktop for InDesign (Windows)	\$ 3,000.00	25%	25%
639-00069C	Kodak Darwin Pro for InDesign (Windows)	\$ 6,000.00	25%	25%
639-00070C	Kodak Darwin Desktop for InDesign (Mac)	\$ 3,000.00	25%	25%
639-00071C	Kodak Darwin Pro for InDesign (Mac)	\$ 6,000.00	25%	25%
015-01040A-05	Prinerger Digital	\$ 42,000.00	15%	15%
017-00998B	Prinerger Digital Zero Touch System	\$ 80,300.00	18%	18%
017-01013B	Prinerger Digital Zero Touch System plus IVDP	\$ 103,300.00	20%	20%
017-01014B	Prinerger Digital Zero Touch Upgrade plus IVDP	\$ 74,000.00	22%	22%

**FIXED SPREAD  
RATE (In  
decimal form)**

**36 Month Rate  
48 Month Rate  
60 Month Rate  
72 Month Rate  
84 Month Rate**

Please see Lease documentation and explanation included in Pricing Section.

# SERVICE PLANS - Q3 2010 v2

27-Jul-10

Select Currency: **USD**



## NexPress High Volume

### Accessories:

ORC Plan	Monthly Base Charge	Page Allowance	Page Overage	VPA Discount	Color Ceiling	B&W Ceiling	Monthly Base
EK HCOS	\$1,100	0	\$ 0.007	35%	\$ 0.065	\$0.0085	NexGlosser \$150
EK HC200S	\$2,050	200,000	\$ 0.007	40%	\$ 0.060	\$0.0085	Booklet Maker \$600
EK HC400S	\$3,050	400,000	\$ 0.006	47%	\$ 0.052	\$0.0085	DocuSheeter \$600
EK HC700S	\$4,950	700,000	\$ 0.005	51%	\$ 0.046	\$0.0085	2nd HCD \$100
EK HC1000S	\$7,450	1,000,000	\$ 0.005	58%	\$ 0.040	\$0.0085	
REMOTE	\$3,050	0	\$ -	40%	N/A	N/A	
EK BRKR0S*	\$1,320	0	\$ 0.011	25%	N/A	N/A	

\*Broker Only Plan

Click Plan	Monthly Base Charge	Color Page Allowance	Color Page Overage	B&W Page Charge	BM/DocuSheeter	Extended Hours
EK HB100	\$9,487	100,000	\$ 0.076	\$0.0090	1x7	\$175
EK HB200	\$16,536	200,000	\$ 0.072	\$0.0090	2x5	\$160
EK HB400	\$28,143	400,000	\$ 0.065	\$0.0090	2x7	\$240
					3x5	\$215
					3x7	\$275

Also available for Recon ONLY (2100 Classic, 2500 Premier)

EK HB020	\$2,173	20,000	\$ 0.102	\$0.0090
EK HB050	\$4,876	50,000	\$ 0.095	\$0.0090

## Digimaster

"A" Meter (For EX300 add Base Charge for Productivity Module)

### Accessories:

Plan	Monthly Base	Images Included	Base Rate	Overage	TIP	Monthly Base
100K	\$600	100,000	\$0.0060	\$0.0040	\$0.0011	Booklet Maker \$315
300K	\$1,000	300,000	\$0.0033	\$0.0030	\$0.0011	Stacker \$80
500k	\$1,500	500,000	\$0.0030	\$0.0029	\$0.0011	Inserter \$105
700K	\$2,000	700,000	\$0.0029	\$0.0027	\$0.0011	Hole Puncher \$200
1.5M	\$4,000	1,500,000	\$0.0027	\$0.0022	\$0.0011	Perfect Binder \$525

"J" Meter (For EX300 add Base Charge for Productivity Module)

Plan	Monthly Base	Images Included	Base Rate	Overage	TIP	Monthly Base
500k	\$2,000	500,000	\$0.0040	\$0.0037	\$0.0017	Roll Feed System \$667
700K	\$2,600	700,000	\$0.0037	\$0.0035	\$0.0017	BPRF \$250
1.5M	\$5,200	1,500,000	\$0.0035	\$0.0033	\$0.0017	Coverbind \$362

## Extended Service Hours/Press (Applicable to all Presses)

Shifts/Days	1x7	2x5	2x7	3x5	3x7
Cost/ Month	\$725	\$660	\$999	\$900	\$1,150

Service Pricing for Kodak InkJet products will be customized for each Agency and therefore, is not included as part of this service pricing.

## SERVICE CONTRACTS

### 1. Definitions.

“Certified Maintenance Technician” and “Certified Operator” shall mean an individual who is currently certified by Kodak as having successfully completed all applicable certification training, at Customer’s expense.

“Equipment” shall mean hardware sold by Kodak and covered by a Support Plan, when such term is used in these Service Contracts terms and conditions.

“Initial Support Term” shall have the meaning given in Section 7 below.

“Site” shall mean the Customer location where the Equipment and/or Software resides.

“Support Plan” shall mean a service offering that sets out the level of service entitlements purchased by Customer.

“Support Services” shall mean Equipment and Software maintenance and support service as further described in Kodak’s quotation and/or Customer’s Purchase Order.

**2. Support Services.** Customers who do not purchase a specific Kodak Support Plan may purchase Support Services from Kodak on a time and material basis at Kodak’s then current rates and in accordance with its then current policies and procedures as applicable for each purchase. Parts provided by Kodak at no additional charge during a warranty period, if any, shall not entitle Customer to a refund, credit, discount or any other compensation, in accordance with the Support Plan.

### 3. Additions and Deletions of Products to the Support Plan.

(a) Additions. In the event that Customer has Kodak equipment and software that is currently under a Support Plan and Customer acquires additional Equipment and Software, for an additional charge, such Equipment and Software may be placed on that Support Plan at the end of any applicable warranty period for such Equipment and Software.

(b) Deletions. Following the Initial Support Term, Customer may remove Equipment and Software from a Support Plan by providing Kodak written notice, in which case the removal shall be effective thirty (30) days following the end of the month of notification and the support fee adjusted accordingly.

**4. Customer Responsibilities.** Customer shall, at its expense, (i) perform all routine maintenance procedures and maintain the Site, each as specified by Kodak and applicable law; (ii) promptly install and maintain all Software Updates and procure any additional equipment or software that may be required for, or as a result of, such installation and maintenance; (iii) provide access to the Products during normal business hours; (iv) provide assistance, information, services, consumables and facilities as may be requested by Kodak to perform the Support Services



Kodak will identify over time selected ORCs and other Consumables for inclusion in Kodak's global environmental initiatives. Customer will promptly return these selected used DCP Consumables, as defined by Kodak. Kodak shall bear only the shipping costs associated with the return of these selected items ORCs not returned may be subject to a core charge.

## **5. Support Restrictions.**

Support Services provided hereunder shall be subject to the following restrictions:

(a) Improper Use of the Products; Environmental Conditions. Kodak shall not be liable for resolving problems relating to (i) improper use of the Products, (ii) the configuration of the Site, including Customer's network, (iii) environmental conditions, or (iv) operation of or use of the Products in a manner that has caused premature wear or failure of components that in Kodak's reasonable judgment is beyond the "normal wear and tear" of the Equipment.

(b) Relocation of Equipment. Any Equipment under a Support Plan that is moved to a different location at the Site, or to a different Customer Site, shall remain eligible for Support Services under the Support Plan if (i) Customer gives Kodak reasonable prior written notice of Customer's intent to move such Equipment, and (ii) Kodak is given the opportunity to supervise and inspect the Equipment during the de-installation, packing, unpacking and reinstallation of the Equipment to ensure that the Equipment is in proper working condition following the relocation.

(c) Kodak is not responsible under this Agreement if not allowed access to the Product or to software-related documentation or information.

(d) Excess Service Calls. Customers whose onsite service calls are deemed excessive (in Kodak's sole discretion) and/or the identified problem(s) could have been resolved by Customer's equipment operator may be subject to additional service charges.

## **6. Prices; Payment.**

(a) Applicable Taxes. In the event Customer or the services provided hereunder are not tax exempt, Customer is responsible for and shall pay or reimburse Kodak for all applicable sales, use, excise, withholding, personal property, VAT or other similar taxes.

(b) Additional Cost Items. Kodak reserves the right to charge Customer under a Support Plan for Additional Cost Items as follows:

(i) Equipment and Software. Any costs incurred by Kodak resulting from Customer (1) changes to the configuration of the Equipment or Software, or (2) postponement of delivery or installation of the Equipment or Software;

(ii) Support Services. Any costs incurred by Kodak, including without limitation, hourly labor rate, parts, zone surcharges (if applicable), and reasonable expenses (travel, accommodation, food and associated expenses, including telecommunications), in providing Support Services as a result of any of the following:

- (1) the Equipment and Software are repaired, modified, have features added to them, or are maintained, or altered, other than by Kodak, a Certified Maintenance Technician or Certified Operator;
- (2) the Equipment is damaged by any negligent or wrongful act or omission by any party other than Kodak or its agents, or is damaged or lost due to misuse, relocation, transportation, air conditioning, humidity control, electrostatic discharge, external electrical fields, or external causes, including accident, electrical power failure or surge, disaster, fire, flood, water, wind, and lightning;
- (3) Customer operates the Equipment with (i) hardware or software which has not been approved or licensed for use by Kodak; (ii) a version of software which is not the latest released Software Upgrade, or which does not contain the latest Software Update; or (iii) Prepress or DPS Consumables not authorized by Kodak for use with the Equipment;
- (4) Support Services are provided outside the Hours of Coverage specified in the Support Plan;
- (5) emergency weekend on-call Support Services are provided;
- (6) Customer has not installed a modem or VPN connection, as requested by Kodak; or
- (7) Kodak installs self-installable Equipment at Customer's request.

(c) Payment. Unless otherwise stated on this Agreement, payment shall be made in US dollars within thirty (30) days from date of invoice.

## **7. Support Term.**

Unless otherwise stated in the Customer Purchase Order, the initial term of the Support Plan (the "Initial Support Term") shall be for a period of twelve (12) months, beginning on the date of installation completion. Thereafter, the Support Plan may be renewed at the applicable then-current price schedule for successive twelve (12) month periods upon mutual agreement of Kodak and the Customer.

## **8. Service Warranty Limitations.**

Customer's sole remedy for service performed hereunder shall be, at Kodak's option, (1) re-performance of the non-conforming Support Services, or (2) refund of the amount paid by Customer for the non-conforming Support Services.

## **9. Termination; Suspension of Performance.**

Kodak may terminate a Support Plan for cause on thirty (30) days notice if Customer fails to operate or use the Products other than in accordance with their specifications, the use for which it was intended or designed, or for which it has been configured by Kodak (i.e. plate type

and size), or if Customer fails to maintain the Products in an environment which meets the requirements set out in the applicable operating manuals or other Kodak guidelines, or is in violation of any of the terms set forth in this Agreement. In the event of any insolvency proceeding by or against Customer, Kodak may terminate all or any part of this Agreement and Support Services provided hereunder upon notice to Customer.

Kodak may withhold Service or terminate the maintenance provisions of this Agreement and charge for time and materials for service if Customer is in default of payment or any other obligations under this Agreement. Customer agrees to assist and cooperate in diagnosis and service. Service and parts invoices due after an Agreement has been cancelled will be billed at normal rates.

## **10. Service Data Management System.**

Kodak retains the exclusive right, title and interest in and to all data and meta-data captured, stored and reported by the Kodak Service Data Management System including, without limitation, machine data, job data, ORC usage data, consumable usage data, machine configuration data, software version data, substrate data and modification data (collectively, "SDMS Data") and to all inventions, improvements, derivative works or any other form of intellectual property created by any party using or relying on the SDMS Data. No title to or ownership of SDMS Data or any derivative work using or relying on SDMS Data is transferred in whole or in part to Customer. Customer shall not provide, disclose or make the SDMS Data or any part thereof available to any third party without the prior express written permission of Kodak. Customer shall not use, print, copy, translate, license or display the SDMS Data without the prior express written permission of Kodak.



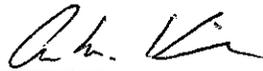
## ATTACHMENT F: CERTIFICATION REGARDING LOBBYING

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:

Ann M. Kerwick

Organization:

Eastman Kodak Company

Date:

October 21, 2010