



Commonwealth of Virginia  
Virginia Information Technologies Agency

**NETWORK EQUIPMENT & SERVICES**  
Optional Use

Date: January 29, 2015

Contract #: VA-110418-AVYA

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

Contractor: Avaya, Inc.  
9604 January Way  
Richmond, VA 23238

FIN: 22-3713430

Contact Person: Jamie Bennett  
Voice/Fax: 703-390-8313  
Email: [jabennett@avaya.com](mailto:jabennett@avaya.com)

Term: April 22, 2015 – April 21, 2016

Payment: Net 30 days

For Additional Contract Information, Please Contact:

Virginia Information Technologies Agency  
Supply Chain Management

Jimmy MacKenzie  
Strategic Sourcing Specialist  
Phone: 804-416-6247  
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Fax: 804-416-6361

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

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

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





## *COMMONWEALTH of VIRGINIA*

### **Virginia Information Technologies Agency**

Samuel A. Nixon, Jr.  
Chief Information Officer  
E-mail: [cio@vita.virginia.gov](mailto:cio@vita.virginia.gov)

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

TDD VOICE -TEL. NO.  
711

January 28, 2015

Avaya, Inc.  
9604 January Way  
Richmond, VA 23238

Contact Person: Jamie Bennett

Per Section 3.A. ("Term and Termination") of contract VA-110418-AVYA, The Virginia Information Technologies Agency has elected to exercise its option to renew the contract for one year, from 4/22/15 through 4/21/16. Should you have any questions, please feel free to contact me.

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

**MODIFICATION NO. 1  
TO  
CONTRACT NUMBER VA-110418-AVYA  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
AVAYA Inc.**

This MODIFICATION No. 1 is hereby incorporated into and made an integral part of Contract VA-110418-AVYA

The purpose of this Modification is to add the clause(s) and clarifications listed below:

1. Add to the definition of "Authorized Users" in Section 2 Subsection C on Contract Page 5.  
*"Authorized Users also include private institutions of higher education chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code. A list of the private institutions eligible to use this contract can be found at <http://www.cicv.org/our-Colleges/Profiles.aspX>*
2. Add to the definition of "Product Acceptance" in Section 4 Subsection F on Contract Page 10.  
*"If the authorized User is a private institution chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code, such private institution may have its own per diem amounts applicable to Supplier's pre-approved travel expenses."*
3. Add to the definition of "Software License" in Section 11 on Contract Page 23.  
*"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. If Authorized User is a private institution, the license shall be held by that private institution."*
4. Add to the definition of "Indemnification" in Section 16 Subsection A on Contract Pages 30-31.  
*"In the event of settlement between Supplier and privative institution of higher education who is an Authorized User of this contract, the settlement shall be satisfactory to such institution."*
5. Add to the definition of "Dispute Resolution" in Section 19 Subsection E on Contract Page 33.  
*"In the event of any breach by a public body or a private institution, 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 to the right to terminate any license or support services hereunder."*

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-110418-AVYA by this Modification No. 1.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

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

NAME OF SUPPLIER

BY: Carson Hastetter

NAME: Carson Hastetter

TITLE: VPOF Water

DATE: 7-24-14

COMMONWEALTH OF VIRGINIA

BY: Day Crenshaw

NAME: Day Crenshaw

TITLE: VetA Security Mgr

DATE: 7/29/14



## *COMMONWEALTH of VIRGINIA*

Samuel A. Nixon, Jr.  
Chief Information Officer  
E-mail: [cio@vita.virginia.gov](mailto:cio@vita.virginia.gov)

### **Virginia Information Technologies Agency**

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

TDD VOICE -TEL. NO.  
711

March 21, 2014

Avaya, Inc.  
9604 January Way  
Richmond, VA 23238

Contact Person: Jamie Bennett

Per Section 3.A. ("Term and Termination") of contract VA-110418-AVYA, The Virginia Information Technologies Agency has elected to exercise its option to renew the contract for one year, from 4/22/14 through 4/21/15. 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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TDD VOICE -TEL. NO.  
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March 11, 2013

Avaya, Inc.  
9604 January Way  
Richmond, VA 23238

Contact Person: Jamie Bennett

Per Section 3.A. ("Term and Termination") of contract VA-110418-AVYA, The Virginia Information Technologies Agency has elected to exercise its option to renew the contract for one year, from 4/22/13 through 4/21/14. Should you have any questions, please feel free to contact me.

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

**Appendix C**  
**RFP 2011-05**  
**Avaya Network Equipment & Services**

<b>Product Category</b>	<b>Delivery Lead Time (In Days ARO)</b>	<b>Spend (Per order)</b>	<b>State Discount % (Off Publically Available Price List)</b>	<b>Academic Discount % (Off Publically Available Price List)</b>
<b>Switches</b>		\$0-\$100,000	<b>35</b>	<b>35</b>
<b>Avaya Manufactured</b>		\$100,001- \$250,000	<b>35</b>	<b>35</b>
		\$250,001- \$375,000	<b>35</b>	<b>35</b>
		\$375,001- \$500,000	<b>35</b>	<b>35</b>
		\$500,001- Plus	<b>35</b>	<b>35</b>
<b>Routers</b>		\$0-\$100,000	<b>35</b>	<b>35</b>
<b>Avaya Manufactured</b>		\$100,001- \$250,000	<b>35</b>	<b>35</b>
		\$250,001- \$375,000	<b>35</b>	<b>35</b>
		\$375,001- \$500,000	<b>35</b>	<b>35</b>
		\$500,001- Plus	<b>35</b>	<b>35</b>
<b>Security (Firewalls)</b>		\$0-\$100,000	<b>35</b>	<b>35</b>
<b>Avaya Manufactured</b>		\$100,001- \$250,000	<b>35</b>	<b>35</b>
		\$250,001- \$375,000	<b>35</b>	<b>35</b>
		\$375,001- \$500,000	<b>35</b>	<b>35</b>
		\$500,001- Plus	<b>35</b>	<b>35</b>
<b>Wireless</b>		\$0-\$100,000	<b>35</b>	<b>35</b>
<b>Avaya Manufactured</b>		\$100,001- \$250,000	<b>35</b>	<b>35</b>
		\$250,001- \$375,000	<b>35</b>	<b>35</b>
		\$375,001- \$500,000	<b>35</b>	<b>35</b>
		\$500,001- Plus	<b>35</b>	<b>35</b>
<b>Maintenance</b>		\$0-\$100,000	<b>15</b>	<b>15</b>
		\$100,001- \$250,000	<b>15</b>	<b>15</b>
		\$250,001- \$375,000	<b>15</b>	<b>15</b>
		\$375,001- \$500,000	<b>15</b>	<b>15</b>
		\$500,001- Plus	<b>15</b>	<b>15</b>
<b>OEM and 3rd Party</b>		\$0-\$100,000	<b>0</b>	<b>0</b>
<b>Solutions</b>		\$100,001- \$250,000	<b>0</b>	<b>0</b>
<i>(Supplier may add additional categories)</i>		\$250,001- \$375,000	<b>0</b>	<b>0</b>
		\$375,001- \$500,000	<b>0</b>	<b>0</b>
		\$500,001- Plus	<b>0</b>	<b>0</b>
<b>Voice Products</b>		\$0-\$100,000	<b>30</b>	<b>30</b>
<b>Avaya Manufactured</b>		\$100,001- \$250,000	<b>30</b>	<b>30</b>
		\$250,001- \$375,000	<b>30</b>	<b>30</b>
		\$375,001- \$500,000	<b>30</b>	<b>30</b>
		\$500,001- Plus	<b>30</b>	<b>30</b>

\*Supplier is to provide the URL to the publicly available pricelist. (Pricelist is currently available on eVA Web site)

\*Delivery Terms: F.O.B. Destination

**Appendix C**  
**RFP 2011-05**  
**Network Equipment & Services**

<b>Service Description</b>	<b>Hourly Rate</b> <i>(Normal business hours- 8am to 5pm)</i>	<b>Hourly Rate</b> <i>(After normal business hours)</i>
<b>Avaya Network Equipment Services</b>		
Network equipment architecture and design services	300	450
Equipment initial installation/configuration services	214	321
Equipment update/upgrade services	214	321
Equipment repair services	214	321
Technical support services <i>(Standard)</i>	214	321
Technical support services <i>(Premium)</i>	300	450
Engineering services <i>(Standard)</i>	214	321
Engineering services <i>(Premium)</i>	300	450
Training	230	345
<b>Avaya Voice Equipment Services</b>		
Remote Maintenance support for customers with a Full Support Service Agreement	360	360
Remote Maintenance support for customers without a Service Agreement	600	600
Remote and Onsite Backbone/RSE Engineer support	500	500
Onsite Maintenance for customers with a Full Support Service Agreement.	200	200
Onsite Maintenance for customers without a service agreement.	600	600
Onsite Maintenance for customers with a Remote Plus Advanved Parts Replacement Service Agreement.	400	400

*\*The rates indicated in the hourly rate columns are a "not-to-exceed" price.*

*\*Supplier shall provide specifications for Standard and Premium services listed above.*

<b>Short Desc</b>	<b>MSRP</b>	<b>Order Code</b>
Data Engineer Hourly	214	N0074993
Data Consultant Hourly	300	N0074994
Voice Engineer Hourly	225	N0074995
Convergence architect Hourly	300	N0074996
Data Architect Hourly	300	N0080425
End User Training Fxd Pr	230	N0186248



## *COMMONWEALTH of VIRGINIA*

### **Virginia Information Technologies Agency**

Samuel A. Nixon, Jr.  
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E-mail: [cio@vita.virginia.gov](mailto:cio@vita.virginia.gov)

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Chester, Virginia 23836-6315  
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TDD VOICE -TEL. NO.  
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March 22, 2012

Avaya, Inc.  
9604 January Way  
Richmond, VA 23238

Contact Person: Jamie Bennett

Per Section 3.A. ("Term and Termination") of contract VA-110418-AVYA, The Virginia Information Technologies Agency has elected to exercise its option to renew the contract for one year, from 4/22/12 through 4/21/13. Should you have any questions, please feel free to contact me.

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



# **Network Equipment Hardware and Services Contract**

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

Avaya Inc.

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**Attachments:**

**Product Life-Cycle**

## HARDWARE AND SERVICES CONTRACT

THIS Contract ("Contract") is entered into by and between the Virginia Information Technologies Agency (hereinafter referred to as "VITA"), pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia, and Avaya Inc. ("Supplier"), a corporation headquartered at 211 Mount Airy Road, Basking Ridge, NJ 07920 to be effective as of April 22, 2011 ("Effective Date").

### 1. PURPOSE

This Contract sets forth the terms and conditions under which Supplier agrees to sell certain of Supplier's Product, and to provide various Services to the Authorized Users. Such Product and Services may include but not be limited to any products and services, including annual maintenance services, in the Original Equipment Manufacture's (OEM) catalog.

### 2. DEFINITIONS

- A. Acceptance**  
Successful delivery and performance of all Services and Deliverables at 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 and all Commonwealth agencies, as defined by §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia.
- D. Confidential Information**  
Any confidential or proprietary information of a Party that is disclosed in any manner, including oral or written, graphic, machine readable or other tangible form, to any other Party in connection with or as a result of discussions related to this Contract or any order issued hereunder, and which at the time of disclosure either (i) is marked as being "Confidential" or "Proprietary", (ii) is otherwise reasonably identifiable as the confidential or proprietary information of the disclosing Party, or (iii) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information of the disclosing Party.
- E. Deliverable**  
The tangible embodiment of the Product and/or Service, performed or provided by Supplier as identified in the applicable Statement of Work. Deliverables do not include generally available hardware and software and are not Products.
- F. Maintenance Level**  
The parameters of Maintenance Services, including the times during which and time-frames in which Supplier shall respond to a request for Maintenance Services. The available Maintenance Levels shall be as defined in Exhibit D hereto. The actual Maintenance Level for a unit of Product shall be set forth in the executed order for Maintenance of that Product referencing this Contract.
- G. Maintenance Coverage Period (MCP)**  
The term during which Maintenance is to be provided for a unit of Product.
- H. Maintenance Services (or Maintenance)**  
Those Services, preventive and remedial, performed by Supplier at Authorized User's request in order to ensure continued operation of the Product. Maintenance Services shall include support services.

- I. Operating Condition**  
That condition which allows the Product to function in a normal, acceptable working manner, as designed by the Product manufacturer.
- J. Party**  
Supplier, VITA, or any Authorized User.
- K. Product**  
Hardware, peripherals, and any other equipment, including the System Software, all upgrades, all applicable user documentation and related accessories as set forth in Exhibit C and provided pursuant to this Contract. "Documentation" may include but is not limited to: users' guides, operations manuals with part lists, copies of all applicable warranties, and other pertinent information necessary for the operation and maintenance of the hardware, System Software, and accessories. Documentation does not include marketing materials.
- L. Receipt (of Product)**  
An Authorized User or its Agent has physically received the Product at the correct "ship to" location. In the case of software features that can be enabled by Supplier remotely or delivered via electronic means, "Receipt" means the date the features are enabled or the software is downloaded to the target processor.
- M. Requirements**  
The functional, performance, operational, compatibility, Acceptance testing criteria and other parameters and characteristics of the Product as set forth in the applicable Documentation, Exhibit A and such other parameters, characteristics, or performance standards for the Product that may be agreed upon in writing by the Parties.
- N. Response Time**  
The time between Supplier's receipt of Authorized User's request for Maintenance and the time Supplier commences repair of the Product.
- O. Service**  
Any Product-related work performed or service provided, including certain Maintenance Services or other services for the Product and provision to the Authorized User of any Deliverable, by Supplier under this Contract. Service does not include the discovery, creation, or development of Work Product.
- P. Software Publisher**  
The licensor of the System Software provided by Supplier under this Contract.
- Q. Statement of Work**  
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 Product, System 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. "SOW" refers to the Statement of Work or ISD, as applicable. "Implementation Services Description" or "ISD" is the description of Supplier's standard Implementation Services under a defined Implementation Services Package then current as of the date of Supplier's acceptance of an order for Implementation Services. Work performed under an SOW does not include Maintenance Services.
- R. 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).
- S. System Software**  
The operating system code, including software, firmware and microcode, (object code version) for each Product, including any subsequent revisions.

**T. Voice Products**

Hardware, peripherals, and any other equipment, including the System Software, all upgrades, all applicable user documentation and related accessories, provided pursuant to this Contract related to voice configurations and solutions. Voice Products does not include products falling into categories Switches, Routers, Security (Firewalls) and Wireless on Exhibit C.

**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 one (1) year. VITA, at its sole discretion, may extend this Contract for up to four (4) additional one (1) year periods after the expiration of the initial one (1) year period. VITA will issue a written notification to the Supplier stating the extension period, not less than thirty (30) days prior to the expiration of any current term. Warranty on or Maintenance Services for any Product ordered during the term of the Contract may extend beyond the term of this Contract. Performance of an order or SOW issued during the term of this Contract may survive the expiration of the term of this Contract, in which case all terms and conditions required for the operation of such order or SOW shall remain in full force and effect until Deliverables and Services pursuant to such order or SOW have met the final Acceptance criteria of the applicable Authorized User.

**B. Termination for Convenience**

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

**C. Termination for Breach or Default**

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

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

Supplier shall have the right to terminate the software licenses granted in the Contract if Authorized User has not cured all breaches of the license limitations or restrictions in this Contract within ten business days of Authorized User's receipt of a reasonably detailed written notice to cure. Such termination will be with immediate effect, without prejudice to any available rights and remedies in contract or for infringement. Upon termination or expiration of the license for any reason, Authorized User shall immediately return the Product and any copies to Supplier or at Supplier's discretion and written notice to Authorized User, Authorized User shall

permanently destroy all copies of the Product and any related materials in Authorized User's possession or control.

**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 for the acquisition of Services and functions which are the same as or similar to those for which the Products provided or installed under the Contract was acquired, irrespective of the source of funds, for the items under this Contract, VITA may terminate any order, in whole or in part, or an Authorized User may terminate its order, in whole or in part, for those goods or services for which funds have not been appropriated. Written notice will be provided to the Supplier as soon as possible after legislative action is completed.

**E. Effect of Termination**

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

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

**F. Transition of Services**

Prior to or upon expiration or termination of this Contract and at the request of VITA, Supplier shall provide all assistance as VITA or an Authorized User may reasonably require to transition Product-related Services to any other supplier with whom VITA or such Authorized User contracts for provision of Product-related services. This obligation may extend beyond expiration or termination of the Contract for a period not to exceed six (6) months. Supplier shall provide such assistance at the hourly rate or a charge agreed upon by Supplier and VITA or an Authorized User.

**G. Contract Kick-Off Meeting**

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

**H. Contract Closeout**

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

#### 4. DELIVERY, INSTALLATION AND ACCEPTANCE

##### A. Delivery Procedure

Supplier shall deliver all Product F.O.B. Destination, with such destination being the "ship to" address specified in the applicable order. For orders for which Supplier is to provide installation of the Product, Supplier shall bear all risk of loss of or damage to the Product until Acceptance by the Authorized User provided Authorized User maintains all delivered hardware in a secure environment with controlled access. For orders for which Supplier is not to provide installation of the Product, Supplier shall bear all risk of loss or damage to the Product until Receipt. In all cases, Supplier shall arrange and pay for all transportation and insurance sufficient to fully protect the Product while in transit. Each shipment shall include a packing slip indicating the Authorized User's order number, the part number, a description of the Product shipped and the quantity shipped. If any loss to, or damage of, the Product occurs prior to Acceptance by the Authorized User, Supplier shall promptly provide a replacement item. Title to Product, excluding System Software, shall pass upon Acceptance. Title to hardware components of Deliverables will pass upon acceptance. Risk of loss will pass to Authorized User when the Deliverable arrives on Authorized User's premises.

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

##### B. Late Delivery

Supplier hereby acknowledges and agrees that failure to deliver the Product ordered in strict accordance with the agreed upon delivery schedule determined in accordance with this Section shall constitute a material breach of this Contract resulting in damages to the ordering Authorized User, the total sum of which would be impracticable or difficult to ascertain as of the Effective Date of this Contract. As an estimate of the minimum amount of damages such Authorized User will suffer, Supplier agrees to credit the Authorized User an amount equal to one-half of one percent (.05%) of the total purchase price, for each day that the Product is undelivered or unoperational for a period of thirty(30) days following the agreed upon delivery date. If the delay lasts longer than thirty (30) days, the Authorized User may immediately cancel the order and collect as late delivery damages ten percent (10%) of the total purchase price. Any credit due the Authorized User will be applied to the next periodic invoice.

In the event the Supplier fails for any reason to deliver within thirty-five (35) days of the agreed upon delivery date set forth in the order/schedule, the ordering Authorized User, at its own discretion, may terminate such order by giving Supplier oral or written notice. Once notice by such Authorized User is sent or given, the Authorized User may immediately procure the undelivered items, or items with similar Requirements 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 cost of the replacement items 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. Notwithstanding the foregoing, the Authorized User reserves any and all other remedies available at law or in equity.

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

Depending upon the site specific location requirements, Supplier will propose Product trade-in and upgrades on a location by location basis.

##### D. Authorized User Cooperation. Authorized User will cooperate with Supplier as reasonably necessary for Supplier's delivery of Products and performance of Services in a timely manner. Authorized User will provide Supplier with interface and other information regarding access to third party products in Authorized User's network and necessary third party consents and

licenses to enable Avaya's performance under the Contract. Authorized User is responsible for ensuring that its networks and systems are adequately secured against unauthorized intrusion or attack and regularly backing up its data and files in accordance with good computing practices. Authorized User will reasonably use, safeguard and return to Supplier any items that Supplier loans to Authorized User ("Avaya Tools") for the purpose of providing Services under this Contract, such as, but not limited to, the Secure Intelligent Gateway. Authorized User will bear risk of loss and damage to Avaya Tools until returned to Supplier. Avaya Tools shall not be considered Products as that term is defined herein. If Authorized User fails to meet its cooperation obligations under this Section or as otherwise provided in the Contract, Supplier may delay or suspend its delivery of Products or performance of Services relating to Authorized User's failure.

**E. Product Installation**

Unless 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.

**F. Product Acceptance**

Products not installed by Supplier shall be deemed accepted upon Receipt. For orders for which Supplier is to provide installation of the Product, Acceptance testing shall commence within five (5) days, or within such other period as set forth in the applicable order, after installation of the Product. 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.

**G. Cure Period**

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

**H. Product Discontinuation**

During the term of this Contract, if any Product listed on Exhibit C, excluding Voice Products is discontinued and Supplier does not offer a substitute acceptable to VITA, Supplier shall, for each Authorized User who purchased the discontinued Product, continue to meet such Authorized User's needs for the discontinued Product for not less than twelve(12) months. Additionally,

Supplier shall make available to the Authorized User maintenance parts for discontinued Product for five (5) years from the date of such discontinuation. In every event, Supplier will provide any Authorized User with 120 days advance written notice of its intent to discontinue any Product type previously ordered by such Authorized User.

The discontinuation of Voice Products will be handled in accordance with Suppliers Life Cycle Policy, attached hereto.

## 5. PRODUCT SUPPORT AND ADDITIONAL SERVICES

### A. Authorized User or Third Party Support

#### 1. Documentation and Support Availability

In the event that VITA terminates this Contract for breach or default, Supplier shall provide all the necessary user and installation documentation reasonably required to enable any Authorized User to maintain and repair the Product itself or to obtain support and maintenance services from an Avaya authorized maintenance provider. Supplier shall also provide the documentation necessary to allow any Authorized User to self-maintain to the subcomponent level. Supplier shall make available, for an additional cost, training as may be necessary to enable Authorized User to self-maintain to the subcomponent level. In addition, for Products listed on Exhibit C, excluding Voice Products, Supplier agrees to provide, for a period of five (5) years from the date of the last purchase, spare parts and components at the cost set forth in Exhibit C, including those solely sourced by Supplier, to enable any Authorized User or its designated third-party maintenance provider to provide full maintenance and repair of the Product. Voice Product will be handled in accordance with Suppliers Life Cycle Policy, attached hereto.

#### 2. Timeliness and Price

Supplier agrees to make the above-referenced documentation, training and spare parts and components available within fifteen (15) days following receipt of a written request, and at a price set forth in Exhibit C, such price not to exceed Supplier's published price list, or the fair market value. In addition, Supplier agrees to sell Product, as set forth in Exhibit C attached hereto, to any Authorized User's third-party maintenance provider under contract with such Authorized User, at the prices as set forth in Exhibit C, for the sole purpose of supporting the Authorized User's installed inventory. Supplier agrees to make available, in a timely manner any and all revisions to information and parts and components lists as they are developed or supplied by Supplier.

### B. Engineering Changes and Product Modification

For each Authorized User that purchased Product, Supplier agrees to document and provide to such Authorized User any and all planned engineering changes to the Product ninety (90) days prior to incorporation, subject to the confidentiality obligations contained in Section 15. All engineering changes to firmware which affect the safety of the Product ("Safety Changes") or the ability of the Product to meet the published specifications ("Performance Changes"), shall be made at no cost to the Authorized User. All engineering changes to software which affect the safety of the Product ("Safety Changes") or the ability of the Product to meet the published specifications ("Performance Changes"), shall be made at no cost to the Authorized User who has a Maintenance or software support service agreement. For Authorized User's who have a Maintenance or software support agreement, Supplier shall install all Safety Changes and Performance Changes within thirty (30) days after issuance of the engineering change order by the Product manufacturer. If such engineering changes affect Product processing or operating capability, they shall be scheduled at the Authorized User's request as to time and at the Authorized User's option. The Authorized User shall have the option to waive all other engineering changes planned by Supplier on the Product delivered or planned for delivery to the Authorized User.

### C. Training

Unless 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 C.

**D. Parts and Maintenance Support**

Supplier agrees to make available spare parts, which shall be certified by Supplier and the Maintenance Services identified in the Maintenance Services section herein and Exhibit D hereto for each Product type, excluding Voice Products, ordered by an Authorized User, for five (5) years from the expiration of the initial Warranty Period. Voice Products will be handled in accordance with Suppliers Life Cycle Policy, attached hereto. Spare parts may be new, factory reconditioned, refurbished, re-manufactured or functionally equivalent. 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.

Authorized User may access Supplier's user support website ([www.support.avaya.com](http://www.support.avaya.com)) for End of Support notifications (defined in Exhibit D), and to register an e-mail address to receive e-mail notifications of the same, when published by Supplier. Supplier will endeavor to post End of Support notifications for Supplier-manufactured Products at least six (6) months in advance of the End of Support date. For Products subject to End of Support, Supplier will continue to provide the support described in Exhibit D except for the End of Support exceptions ("Extended Support"). Under Extended Support Supplier provides the same Full Coverage Maintenance Services described in the SAS, with the following exceptions. At the end of manufacturer support, Tier IV R&D product developer support and going-forward maintenance Updates (e.g., Product Change Notices ("PCNs"), "bug fixes," interoperability/usability solutions) are no longer provided by the manufacturer. Therefore, certain complex faults or functionality issues may not be resolvable without the Authorized User upgrading the system to a version currently supported by the manufacturer. If the support described in Exhibit D does not include Extended Support information, Supplier will make available the description of Extended Support (if available) for the Products concerned at the same time as its End of Support notification. For Products not subject to Extended Support, if Services are discontinued for a Supported Product, the Supported Product will be removed from the order and rates will be adjusted accordingly.

**E. Inventory Record**

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

**F. Product Service Record**

Supplier shall maintain, at no additional cost, a Product Service Record for each unit of Product covered under warranty or maintenance. The Product Service Record shall record the following for such unit of Product: (i) installation/ relocation/ removal/ modifications; (ii) remedial actions; (iii) preventive actions; (iv) any additional services not covered by warranty or maintenance. Upon request by the Authorized User. Annually, to be delivered by July 1<sup>st</sup> of each year, Supplier shall provide, at no additional cost, a copy of the Product Service Record.

**G. Additional Services**

In addition to any on-site warranty or maintenance service obligations, Supplier shall, upon request of an Authorized User by means of a Statement of Work (SOW) issued in accordance with the ordering provisions of this Contract, provide additional Services which may include: non-infrastructure network design; configuration; installation/repair; training; repair of damage or replacement of parts of hardware resulting from changes in the hardware environment, extraordinary use of the hardware, or interconnected devices; service outside the applicable hours of service; relocation of previously installed hardware; assistance to Authorized User's communications department in mutually acceptable duties related to the warranty or

maintenance services provided under this Contract; and other services related to the Product as published by the Product manufacturer or the Supplier (collectively "Milestone Objectives"). Software programming/engineering services and the development of Work Product are not authorized as Services under this Contract.

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

The charge for such Services shall be at the hourly rate specified in Exhibit C and shall be inclusive of all expenses.

Services provided to enhance network security are not a guaranty against malicious code, deleterious routines, and other techniques and tools employed by computer "hackers" and other third parties to create security exposures. Neither Supplier nor its suppliers make any warranty, express or implied, that all security threats and vulnerabilities will be detected or that the Services will render an end user's network or particular network elements safe from intrusions and other security breaches.

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

All additional Services shall be performed at the times and locations set forth in the applicable SOW and at the rates set forth in Exhibit C herein. Unless VITA issues a written authorization for a time and materials type SOW, any SOW shall be of a fixed price type but may, with the written approval of VITA, contain a cost-reimbursable line item(s) for pre-approved travel expenses. For time and materials type SOWs, Supplier personnel shall maintain daily time records of hours and tasks performed, which shall be submitted or made available for inspection by the Authorized User upon seventy-two (72) hours advance written notice.

### **2. Change Orders**

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

### **3. Acceptance**

Deliverable (s) shall be deemed accepted when the Authorized User determines that such Deliverable (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 as set forth in the SOW. 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.

Where the SOW does not contain specific acceptance criteria and procedures (“Acceptance Procedures”), the Deliverable and Services are deemed accepted upon the earlier of either: (i) Supplier providing notice of completion to Authorized User; or (ii) production use of Deliverables or installed Products.

#### **4, Rejection of SOW.**

Where the SOW contains Acceptance Procedures, the Deliverable or Milestone Objective is deemed accepted upon the earlier of either: (i) the end of the acceptance period defined in the Acceptance Procedures, unless Supplier has received from Authorized User a rejection notice indicating in reasonable detail the material failure of the Deliverable or Milestone Objective to conform to the criteria in the Acceptance Procedures (“Rejection Notice”); or (ii) production use (except to the extent production use is included in the Acceptance Procedures). If the Deliverable or Milestone Objective fails to conform to the criteria in the Acceptance Procedures and Supplier has received a timely Rejection Notice, then Supplier shall correct any non-conformities identified during Acceptance testing and re-submit such non-conforming Deliverable or Milestone Objective for re-testing within five (5) 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 Deliverable or Milestone Objective which meets the Requirements, the Authorized User may, in its sole discretion: (i) reject the Deliverable or Milestone Objective in its entirety, and any Deliverable or Milestone Objective rendered unusable due to the non-conforming Deliverable or Milestone Objective, and recover amounts previously paid hereunder for all such Deliverable or Milestone Objective; (ii) issue a “partial Acceptance” of the Deliverable or Milestone Objective with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Deliverable or Milestone Objective while reserving its right to revoke Acceptance if timely correction is not forthcoming. In the event of a failure of a Deliverable or Milestone Objective to meet, in all material respects, the Requirements after the second set of acceptance the Authorized User may, at its sole discretion, terminate its order or SOW, in whole or in part, for the Deliverable or Milestone Objective to be provided thereunder by Supplier.

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

#### **6. SUPPLIER PERSONNEL**

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

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

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

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

**C. Key Personnel**

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

**D. Subcontractors**

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

**7. WARRANTY AND REMEDY**

**A. Supplier**

Supplier shall perform its obligations hereunder in a professional and workmanlike manner in accordance with generally accepted industry standards in the field for which the work is to be performed.

**B. Ownership**

Supplier warrants that it has the right to provide the Services, including Deliverables, and is the owner of the Product or otherwise has the right to grant to the Commonwealth or any Authorized User title to or the right to use the Product provided hereunder. Upon receipt of payment, the Commonwealth or the ordering Authorized User, as applicable, shall obtain good and clear title to the Product, excluding the System Software, free and clear of all liens, claims, security interests and encumbrances.

**C. Supplier Viability**

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

**D. 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.

**E. Performance**

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;

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;

The Services and Deliverables shall meet or exceed the Requirements;

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.

**F. Compatibility**

Supplier warrants that each Product, excluding Voice Products 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 five (5) years.

**G. Product**

Supplier warrants the following with respect to the Product:

- i). Product pursuant to a particular Request for Proposal (RFP), quote, or Request for Quote (RFQ), shall be fit for the particular purposes specified by VITA in the RFP and in this Contract and, if applicable, by the authorized User requesting such quote or issuing such RFQ, and Supplier is possessed of superior knowledge with respect to the Product and is aware that Authorized Users are relying on Supplier's skill and judgment in providing the Product;
- ii). The Product shall be free of defects in material, design and workmanship;
- iii). Upon delivery, the Product shall be new and in Operating Condition and shall have all released engineering changes released to date already installed;
- iv). Each Product delivered hereunder shall function in conformance with the Requirements;  
No engineering change made to the Product or System Software revisions shall degrade the performance of the Product to a level below that defined in the applicable Request for Proposal, and in the Product manufacturer's published specifications;  
Upon delivery, all System Software shall be at the current release level unless otherwise requested by the ordering Authorized User; and  
Supplier represents and warrants that to the best of Supplier's knowledge, no portion of the Products contain, at the time of shipment, any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus," or other computer software routines or hardware components designed to (i) permit access or use of Authorized User's computer systems by a party not authorized by this Contract, (ii) disable, damage or erase the Products or data, or (iii) perform any other such actions. Further, Supplier represents and warrants the Products and the design thereof shall not contain preprogrammed preventative routines or similar devices which prevent Authorized user from exercising the rights set forth in this Contract. The phrase "permit access or use of Authorized user's computer systems" is not intended to include functionality of a computer program that communicates or interfaces with another computer program to extract or obtain data to be processed as part of the normal functionality of the extracting computer program. Authorized User acknowledges that certain Products may contain programming that: (1) restricts and/or limits access to certain features, functionality or capacity of such Products subject to the user obtaining and/or making payment for licenses to such features, functionality or capacity; or (2) as identified in the Documentation, periodically deletes or archives data generated by use of the Products and stored on the applicable storage device if not backed up on an alternative storage medium after a certain period of time.

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

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

warranty has expired, receive a straight line pro-rated refund, by year thereafter for the five (5) year period following installation of the Product.

Voice Products will operate in accordance with the performance standards as set forth in the applicable Documentation. If the Product fails to satisfy the performance standards set forth in the applicable documentation for that Product, Supplier shall pay for any and all additional repairs, parts and labor required to bring Product to the appropriate level set forth in the Documentation. If Supplier fails to correct any nonconformance within thirty (30) days, the Authorized User may, at its option, return such Product and receive a full refund during the Product warranty period.

**I. Warranty Services**

During the warranty period of twelve (12) months after Acceptance, or as specified in the applicable order, Supplier warrants that the hardware shall meet or exceed the Requirements. During the warranty period of thirty (30) days after Acceptance, or as specified in the applicable order, Supplier warrants that the Deliverables and Services shall meet or exceed the Requirements. Supplier shall provide warranty services (including unlimited telephonic support and all necessary labor) during the Warranty Period at the prices identified in Exhibit C. Supplier shall correct, at no additional cost to any Authorized User, all errors identified during the warranty period that result in a failure of the hardware, Deliverables or Services to meet the Requirements.

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.

**J. System Software Warranty**

As part of the standard warranty offering, for a period of not less than ninety (90) days beginning on the date of Acceptance, the System Software shall meet or exceed the Requirements.

**a) Software Evolution – Non-Voice Products**

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 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 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.

**b) Software Evolution – Voice Products**

As an entitlement of Suppliers Software Support Plus Upgrades Maintenance Service offer:

- i) 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 fees in order to receive enhancements, releases, upgrades or support for the System Software.

- ii) If Supplier or Software Publisher makes a Minor or a Major Release (as defined below) of a Product covered by Suppliers Software Support Plus Upgrades Maintenance Service offer commercially available during the coverage term, Authorized User will have access to the features and functions of the new release shall be entitled to license such System Software product at no additional license fee.

Major Release – means a major change to the software that introduces new optional features and functionality. Major Releases are typically designated as a change in the digit(s) to the left of the first decimal point (e.g. [n].y.z).

Minor Release – means a change to the software that introduces a limited amount of new optional features and functionality. Minor Releases are typically designated as a change in the digit to the right of the first decimal point (e.g. n.[y].z).

**K. Escalation Procedures**

TBD based on Supplier proposal.

**L. Warranty Remedies**

If Supplier is unable to make the Product, including System Software, or Deliverable conform, in all material respects to the Requirements, within thirty (30) days following notification by an Authorized User, Supplier shall, at its option, either (i) replace the non-conforming Product or Deliverable or (ii) accept return of the non-conforming Product or Deliverable and return all monies paid by such Authorized User for the returned Product or unaccepted Deliverable or Service. Replacement hardware may be new, factory reconditioned, refurbished, re-manufactured or functionally equivalent and will be furnished only on an exchange basis. Returned hardware that has been replaced by Avaya will become Avaya's property. Replacement Products are warranted as above for the remainder of the original applicable Products warranty period. Products subject to a warranty claim must be returned to Supplier in accordance with Supplier's instructions accompanied by evidence satisfactory to Supplier that the Products remain entitled to warranty protection. If a Product is returned within the applicable warranty period subject to a valid warranty claim, Supplier will not charge for any repair, replacement, error identification or correction, or return shipment of the non-conforming Product. If Supplier determines that the Product was operating in conformance with its applicable warranty, Supplier may charge Authorized User for error identification or correction efforts, repair, replacement and shipment costs at mutually agreeable rates.

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.

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

Non-Voice Products:

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

excluding license grants that are specific to the provisioning of Maintenance Services or System Software Maintenance Services.

Voice Products:

Authorized User, at its sole discretion, may order from Supplier Maintenance Services, including System Software Maintenance for a period of one (1) year (Maintenance Coverage Period) and for the annual fee identified in Exhibit C. Supplier warrants that it shall make Maintenance Services available for Hardware Products for a minimum of three (3) years following the "End of Sale Date". For Software, including System Software, Supplier shall make available Maintenance Services for the last Minor Release or Update of the current Major Release and the last Minor Release or Update within the one prior Major Release. At a minimum, for all Software, including System Software, Maintenance Services for the last Minor Release or Update of a Major Release shall continue for one (1) year following the "End of Sale Date" of the Major Release. "End of Sale Date" means the last date that a Product will be sold. 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, excluding license grants that are specific to the provisioning of Maintenance Services or System Software Maintenance Services.

**N. Exclusions and Disclaimers.** The warranties do not extend to any damages, malfunctions, or non-conformities caused by: (i) Authorized User's use of Products in violation of the license granted under the Contract or in a manner inconsistent with the Documentation; (ii) use of non-Supplier furnished equipment, software, or facilities with Products (except to the extent provided in the Documentation); (iii) Authorized User's failure to follow Supplier's installation, operation or maintenance instructions; (iv) Authorized User's failure to permit Supplier timely access, remote or otherwise, to Products; (v) failure to implement all new Updates (defined below) to software provided under the Contract; (vi) Products that have had their original manufacturer's serial numbers altered, defaced or deleted; or (vii) Products that have been serviced or modified other than by Supplier or a third party specifically authorized by Supplier to provide the service or modification. An "Update" is a change in software that typically provides maintenance correction only and is designated as a change in the digit to the right of the second decimal point (e.g. n.y.[z]). EXCEPT AS REFERENCED AND LIMITED IN THIS SECTION, NEITHER SUPPLIER NOR ITS LICENSORS OR SUPPLIERS MAKES ANY EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY PRODUCTS OR SERVICES OR OTHERWISE RELATED TO THE CONTRACT. SUPPLIER DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF PRODUCTS OR THAT THE PRODUCTS AND SERVICES WILL PREVENT TOLL FRAUD.

**THE OBLIGATIONS OF SUPPLIER UNDER THIS WARRANTY AND REMEDY SECTION ARE MATERIAL. SUPPLIER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY OTHER PARTICULAR PURPOSE OR NON-INFRINGEMENT.**

#### **8. MAINTENANCE SERVICES**

Supplier shall provide Maintenance Services (including telephonic support and travel and labor as detailed in the applicable Service Agreement Supplement) during the Maintenance Coverage Period (MCP) at the prices identified in Exhibit C without additional charge to maintain the Product in accordance with the Requirements.

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

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

**A. Ordering**

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

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

Products may be subject to certification as detailed in Exhibit D, prior to issuance of coverage.

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. Changes reducing the scope of the Maintenance Level made at times other than at the annual renewal may subject Authorized User to termination charges as set forth in Exhibit D.

Unless stated in the applicable Service Agreement Supplement or 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.

**B. Renewal**

At least sixty (60) days prior to the expiration of the MCP for each unit of Product, Supplier shall notify the Authorized User of such expiration, and the Authorized User, at its sole discretion, may issue an order to Supplier to renew Maintenance Services, including System Software Maintenance Services, for an additional one (1) year period. The annual fee for Maintenance Services shall not exceed the fee charged for the preceding year's Maintenance Services by more than four percent (4%), or the annual change in CPI, as defined in the Purchase Price and Price Protection section, in effect at the time, whichever is less. Termination of this Contract or cancellation of Maintenance Services, including System Software Maintenance Services if provided as a separate offering from Supplier, by an Authorized User shall not affect this Contract or the grant of any license pursuant thereto, unless license was granted as an entitlement of the Maintenance Services or System Software Maintenance Services.

**C. Services**

Maintenance Services shall be as follows:

**1. Product Covered**

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

**2. Preventive Maintenance**

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

**3. Remedial Maintenance**

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

**4. Replacement Parts**

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

**5. Spares**

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

**6. Notification and Correction of Defects**

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

**7. Advanced Replacement Services**

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

**8. On-site Maintenance Services**

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

**9. System Software Maintenance**

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

a) New Releases

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

b) Coverage

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

c) Response and Restore Times

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

d) Software Evolution – Non-Voice Products

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 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 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, 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.

e) Software Evolution – Voice Products

As an entitlement of Suppliers Software Support Plus Upgrades Maintenance Service offer:

- i) 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 maintenance fees in order to receive enhancements, releases, upgrades or support for the System Software.

- ii) If Supplier or Software Publisher makes a Minor or a Major Release (as defined below) of a Product covered by Suppliers Software Support Plus Upgrades Maintenance Service offer commercially available during the coverage term, Authorized User will have access to the features and functions of the new release shall be entitled to license such System Software product at no additional license fee.

Major Release – means a major change to the software that introduces new optional features and functionality. Major Releases are typically designated as a change in the digit(s) to the left of the first decimal point (e.g. [n].y.z).

Minor Release – means a change to the software that introduces a limited amount of new optional features and functionality. Minor Releases are typically designated as a change in the digit to the right of the first decimal point (e.g. n.[y].z).

## 10. Escalation Procedures

TBD based on Supplier proposal.

## 11. Remedies

In addition to any remedies described in [Exhibit D](#), if Supplier is unable to make the Product, including the System Software, conform, in all material respects, to the Requirements within thirty (30) days following notification by an Authorized User, Supplier shall, at such Authorized User's request, re-perform the services and provide a replacement Product at no additional cost to the Authorized User, if Product coverage is the subject of the Maintenance Services. 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.

## 9. REMOVAL OF USER DATA ON RETURNED OR REPLACED PRODUCT

Supplier agrees to support VITA's policy and procedure regarding removal of data from hard drives required per [COV ITRM Standard SEC514-03](#) for all Authorized User Product being returned and/or replaced, by not accepting any returned Product until the Authorized User validates to the Supplier that one of the following actions has been taken:

- a.) If the hard drive malfunctions and data can be removed in accordance with the requirements in [COV ITRM Standard SEC514-03](#) the drive may be returned to the Supplier for replacement under warranty or maintenance.
- b.) Hard drives that are inoperable and do not allow data to be removed in accordance with the requirements in [COV ITRM Standard SEC514-03](#) shall be physically destroyed using a method previously outlined.
- c) Hard drives returned due to non-acceptance after installation and acceptance testing or as a result of any Termination action, Infringement consequence or any other action shall have data removed or hard drives destroyed by the same methods prescribed in a) and b) above.

When Product is returned or destroyed due to Termination for Breach or Default by the Supplier, or as a result of Supplier's infringement of any third party's rights, the Supplier is responsible for and will bear all costs for Authorized User performing the required action in accordance with [COV ITRM Standard SEC514-03](#). When Product is returned as a result of any warranty or maintenance-related remedy, the Authorized User is responsible for and will bear all costs for performing the required action in accordance with [COV ITRM Standard SEC514-03](#).

## 10. SCOPE OF USE

Any Authorized User may use the Product, and any software licensed in connection with such Product, on a worldwide basis for the benefit of itself and its agents. Supplier further authorizes use of the Product by third parties who are under contract with an Authorized User to provide outsourcing

services, including but not limited to providing application development services, data processing or facilities or infrastructure management services for the benefit of such Authorized User. For Products to which the Commonwealth or an Authorized User takes title, and any System Software which is integral to such Products, under the terms of this Contract, there are no restrictions on subsequent resale or distribution thereof by the Commonwealth or such Authorized User provided Authorized User and recipient of any System Software shall execute transfer paperwork as Supplier shall reasonably require.

## **11. 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.

### **A. License Grant**

Supplier hereby grants to the Commonwealth and all Authorized Users a fully paid, perpetual, non-sublicensable, nonexclusive, non-transferable, (excluding transfers in accordance with Section 10) license to use, and to permit any agent of the Commonwealth or such Authorized User to use, System Software for each Product solely to the extent of the authorized activation or authorized usage level and within the scope of the applicable license types described in Section F and solely for the purpose specified in the Documentation, for Authorized User's internal business purposes and at locations in the United States. Charges for software may be based on extent of use authorized as specified in an order or invoice. 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 the 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 or any modifications to it, is transferred to the Commonwealth or the Authorized User.

### **B. 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 to which the Commonwealth or such Authorized User has taken title.

### **C. 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.

**D. Authorized User Compliance**

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

**No Subsequent, Unilateral Modification of Terms by Supplier**

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, the terms and conditions set forth herein shall supersede and govern licensing and delivery of all products and services hereunder. For software that is delivered electronically to or downloaded by Authorized User via Supplier's secured website, the license terms contained in this Contract will prevail over the license terms (including Supplier's standard End User License Contract, if applicable) that Authorized User might have accepted concurrent with license activation or downloading of the Software from Supplier's secured website.

**E. License Restriction**

To the extent permissible under applicable law, Authorized User agrees not to: (i) decompile, disassemble, or reverse engineer the software; (ii) alter, modify or create any derivative works based on the software or Documentation; (iii) merge the software with any other software other than as expressly set forth in the Documentation; (iv) use, copy, sell, sublicense, lease, rent, loan, assign, convey or otherwise transfer the software or Documentation except as expressly authorized by the Contract; (v) distribute, disclose or allow use of the software or Documentation, in any format, through any timesharing service, service bureau, network or by any other means; (vi) allow any service provider or other third party, with the exception of Supplier's authorized channel resellers and their designated employees ("Authorized Providers") who are acting solely on behalf of and for the benefit of Authorized User, to use or execute any software commands that cause the software to perform functions that facilitate the maintenance or repair of any Product except that a service provider or other third party may execute those software commands that, as designed by Supplier, would operate if a user is logged into a Product using a customer level login and Maintenance Software Permissions ("MSPs") were not enabled or activated; (vii) gain access to or the use of any software or part thereof without authorization from Supplier; (viii) enable or activate, or cause, permit or allow others to enable or activate any logins reserved for use by Supplier or Authorized Providers; or (ix) permit or encourage any third party to do so. Authorized Providers shall be obligated to comply with the terms and provisions of this Contract. Authorized User shall advise any third party, including any Authorized Provider, who accesses or uses any software of the terms and provisions of this Contract. Authorized User shall be responsible for such third party's failure to comply and shall indemnify Supplier for any damages, loss, expenses or costs, including attorneys' fees and costs of suit, incurred by Supplier as a result of non-compliance with this section. At Supplier's request and upon reasonable prior written notice, Supplier will have the right to inspect Authorized User's compliance with these Software License Terms.

**F. Software License Types**

The following license terms and restrictions will apply to software licensed under this Contract.

1 License Types. Avaya grants Authorized User a license within the scope of one of the license types described below. The license type abbreviations below may be referenced in the order and/or Product Documentation. Where the order or Documentation does not expressly identify a license type, the applicable license will be a Designated System License. Where the order does not expressly indicate a specific number of licenses or units of capacity, the applicable number of licenses and units of capacity for which the license is granted will be one. For purposes of this list of license types: (i) "Designated Processor" means a single stand-alone computing device; and (ii) "Server" means a Designated Processor that hosts a software application to be accessed by multiple users.

1.1 Designated System(s) License (DS). Authorized User may install and use each copy of the software only on a number of Designated Processors up to the number indicated in the order. Avaya

may require the Designated Processor(s) to be identified in the order by type, serial number, feature key, location or other specific designation, or to be provided by Authorized User to Avaya through electronic means established by Avaya specifically for this purpose.

1.2 Concurrent User License (CU). Authorized User may install and use the software on multiple Designated Processors or one or more Servers, so long as only the licensed number of Units are accessing and using the software at any given time. A "Unit" means the unit on which Avaya, at its sole discretion, bases the pricing of its licenses and can be, without limitation, an agent, port or user, an e-mail or voice mail account in the name of a person or corporate function (e.g., webmaster or helpdesk), or a directory entry in the administrative database utilized by the Product that permits one user to interface with the software. Units may be linked to a specific, identified Server.

1.3 Database License (DL). Authorized User may install and use each copy of the software on one Server or on multiple Servers provided that each of the Servers on which the software is installed communicates with no more than a single instance of the same database.

1.4 CPU License (CP). Authorized User may install and use each copy of the software on a number of Servers up to the number indicated in the order provided that the performance capacity of the Server(s) does not exceed the performance capacity specified for the software. Authorized User may not re-install or operate the software on Server(s) with a larger performance capacity without Avaya's prior consent and payment of an upgrade fee.

1.5 Named User License (NU). Authorized User may: (i) install and use the software on a single Designated Processor or Server per authorized Named User (defined below); or (ii) install and use the software on a Server so long as only authorized Named Users access and use the software. A "Named User" means a user or device that has been expressly authorized by Avaya to access and use the software. At Avaya's sole discretion, a Named User may be, without limitation, designated by name, corporate function (e.g., webmaster or helpdesk), an e-mail or voice mail account in the name of a person or corporate function, or a directory entry in the administrative database utilized by the Product that permits one user to interface with the Product.

1.6 Shrinkwrap License (SR). Authorized User may install and use the software in accordance with the terms and conditions of the applicable license agreements, such as "shrinkwrap" or "click-through" licenses, accompanying or applicable to the software ("Shrinkwrap License").

## 12. ORDERS AND COMPENSATION

### A. Supplier Quote and Request for Quote

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

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

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

**B. Orders**

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

Orders are subject to acceptance by Supplier. Supplier may accept an order by shipping Products or commencing to perform Services. Accepted orders will be deemed to incorporate and be subject to the Contract. Orders will be governed by the terms of the Contract even when they lack an express reference to the Contract.

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

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

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

This ordering authority is limited to issuing orders for the Products and Services available under this Contract. Under no circumstances shall any Authorized User have the authority to modify this Contract. All other terms and conditions contained in any purchase order or other document not expressly referenced in the Contract will have no effect, unless Authorized User requires additional terms and conditions which will be mutually agreed by both Supplier and Authorized User.

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

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

**C. Purchase Price and Price Protection**

Exhibit C sets forth the prices by Product type (including whole units and repairable major components thereof), for warranty services and Maintenance Services, and for non-Warranty and non-Maintenance Services offered by the Supplier and the appropriate Commonwealth discounts. Prices for Product shall not increase for a period of not less than two (2) years from the Effective Date of this Contract. Discounts shall not decrease for the duration of this Contract. Thereafter, any increase in price shall be limited to once per twelve (12) month period and shall not exceed the lesser of three percent (3%) or the annual increase in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, for the expenditure category "Information technology, hardware and services" as published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/>), for the effective date of the increase compared with the same index one (1) year prior. Supplier shall demonstrate the added value for any

requested price increase. Any change in price shall be submitted in writing in accordance with the above and shall not become effective for sixty (60) days thereafter. Semi-annually, VITA may check the prices for Product against the CPI-U, as defined above, for the expenditure category "Information technology, hardware and services", and the prices in Exhibit C shall be appropriately reduced to ensure continued price competitiveness, if required. Supplier agrees to offer Product and Service price reductions to ensure compliance with the Competitive Pricing Section.

**D. Supplier-Sponsored Product Promotions**

The Supplier, at its discretion, may sponsor Product and Service promotions to encourage the sale of a specific Product or Service 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 not propose or promote the pricing contained in any promotion 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, excluding pricing provided as a part of the RFQ process described in Section 12 A, VITA shall have the ability to terminate the Contract.

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.

Nothing in this Section 12 D shall preclude Supplier from offering more advantageous pricing, as a transactional offer, to Authorized Users.

**E. Invoice Procedure**

Supplier shall remit each invoice to the "bill-to" address provided with the order promptly upon; (i) Receipt for non-Supplier-installed Products; or (ii) Acceptance for Supplier-installed Products.

Payment for Maintenance Services shall be annually in advance unless a different payment option is chosen by the Authorized User. No invoice shall include any costs other than those identified in the executed order, which costs shall be in accordance with Exhibit C. Without limiting the foregoing, all shipping costs are the Supplier's responsibility except to the extent such charges are identified in Exhibit C, or as noted in any executed order referencing this Contract. Invoices issued by the Supplier shall identify at a minimum:

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

vi). Supplier shall submit separate invoices for the Maintenance charges (detailing the Product types and quantities by Authorized User site), for billable additional services, and for any installation services, and any other agreed upon written instrument. Additional invoices may be required by Authorized User from time to time detailing charges for Product at affiliate locations.

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

**F. Purchase Payment Terms**

Supplier is responsible for the accuracy of its billing information. Supplier agrees to issue invoices hereunder in accordance with Section E. Charges for Product or Services accepted more than one hundred and twenty (120) days prior to receipt of a valid invoice may not be paid.

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

If there are any disputed items, an Authorized User shall pay all undisputed charges and promptly notify Supplier in writing of any disputed amount. Supplier shall thereupon review its records, and, if it does not concur with the Authorized User, provide the Authorized User with documentation to support the charge. If such charges remain in dispute, such dispute shall be resolved in accordance with the Dispute Resolution section of this Contract. In the absence of the Supplier's written evidence identifying the merit of the disputed amounts, Authorized User may not pay the disputed amounts and may consider the matter concerning the specific identified amounts closed. All payment terms are net 30 days after receipt of the invoice. Subject to law, Authorized User will reimburse Supplier for reasonable attorneys' fees and any other costs associated with collecting delinquent undisputed payments. Supplier may suspend licenses and performance of orders for which payment is overdue until the overdue amount is paid in full.

Unless Authorized User provides Supplier with a current tax exemption certificate, Authorized User is solely responsible for paying all legally required taxes, including without limitation any sales, excise or other taxes and fees which may be levied upon the sale, transfer of ownership, license, installation or use of the Products, except for any income tax assessed upon Supplier. The preceding sentence shall be superseded to the extent the payment of taxes is governed by conflicting State law.

**G. Universal Service Fund**

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

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

### 13. 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 termination of the Contract.

**B. Small Business Participation**

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

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

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

**14. COMPETITIVE PRICING**

Supplier warrants and agrees that each of the charges pursuant to this Contract are comparable to or better than the equivalent charge offered to any government [or education] customer of Supplier within the Commonwealth of Virginia ("Comparison Customer") for the same or substantially similar products or services for comparable quantities under substantially similar terms and conditions. If Supplier enters into any arrangement with Comparison Customer or with an Authorized User to provide Hardware or Services under more favorable prices, in addition to all other remedies available to Authorized User by law, the Authorized User is entitled to a refund in the amount of the difference between the price charged to the Authorized User and the lower price charged to the Comparison Customer, together with interest

**15. 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. 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 but only to the extent so ordered by a circuit court of the Commonwealth. Supplier proprietary software as defined in 2.2-3705.1 of the Code of Virginia and supplier proprietary records and trade secrets as defined in 2.2-3705.6 of the Code of Virginia that are in the possession of the authorized user pursuant to a promise of confidentiality from a public body are exempt from disclosure.
- v). as known by the receiving Party prior to its receipt and was not received from a third party in breach of that third party's confidentiality obligations

C. Return or Destruction

The confidentiality obligations of each Party will survive expiration or termination of the Contract. Upon termination of the Contract, each Party will cease all use of the other Party's Confidential Information and shall (i) at its own expense, (a) promptly return to the disclosing Party all tangible Confidential Information (and all copies thereof except the record required to be retained by law) or (b) upon written request, destroy such Confidential Information and provide the disclosing Party with written certification of such destruction, and (ii) cease all further use of the 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.**

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

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

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

## **B. Liability**

Except for liability with respect to (i) any intentional or willful misconduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) any act or omission of any employee, agent, or subcontractor of Supplier, (iii) claims for bodily injury, including death, and real and tangible property damage, (iv) Supplier's indemnification obligations, (v) Supplier's confidentiality obligations, and (vi) Supplier's security compliance obligations, Supplier's liability shall be limited to twice the aggregate value of the Products and Services provided under this Contract. Supplier agrees that it is fully responsible for all acts and omissions of its employees, agents, and subcontractors, including their gross negligence or willful misconduct.

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

## **17. 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, additional forms which may include non-disclosure agreements to be signed on behalf of Supplier and 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 notify VITA and Authorized User, if applicable, as soon as possible, but no later than 24 hours after the confirmation 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.**

## **18. BANKRUPTCY**

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

## **19. GENERAL PROVISIONS**

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

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

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

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

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

The then-current 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\\_Cs\\_Rev3.pdf](http://www.vita.virginia.gov/uploadedFiles/SCM/ARRA_Ts_Cs_Rev3.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. 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 service addressed to the addresses shown on the signature page. VITA or Supplier may change its address for notice purposes by giving the other notice of such change in accordance with this Section.

**H. No Waiver**

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

**I. Assignment**

This Contract shall be binding upon and shall inure to the benefit of the permitted successors and assigns of VITA and Supplier. Supplier may upon submission and approval by VITA of any statutorily required novation or assignment request assign, delegate or otherwise convey this Contract, or any of its rights and obligations hereunder, to any of its affiliated entities or any entity to which Supplier may sell, transfer, convey, assign or lease all or substantially all of the assets or properties used in connection with its performance under the Contract. Any other attempted assignment without consent shall be void. VITA may assign this Contract to any entity, so long as the assignee agrees in writing to be bound by the all the terms and conditions of this Contract.

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

**J. Captions**

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

**K. Severability**

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

**L. Survival**

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

**M. Force Majeure**

No Party shall be responsible for failure to meet its obligations under this Contract if the failure arises from causes beyond the control and without the fault or negligence of the non-performing Party. If any performance date under this Contract is postponed or extended pursuant to this section for longer than thirty (30) calendar days, either party, by written notice given during the postponement or extension, may terminate Supplier's right or obligation 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. Supplier shall be paid for all Product accepted and all Services performed up to the date of termination.

**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 and work papers directly related to this Contract to determine the validity of billings that relate to the Product purchased and Services rendered or the amounts due Supplier for such services under this Contract. VITA's right to audit shall be limited as follows:

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

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

**P. Offers of Employment**

During the first twelve (12) months of the Contract, should Supplier hire an employee of VITA who has substantially worked on any project covered by this Contract without prior written consent, the Supplier shall be billed for fifty percent (50%) of the employee's annual salary in effect at the time of termination.

**Q. Contract Administration**

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

**R. Intellectual Property Rights**

**Authorized User Owns Authorized User IP.** Authorized User or the Commonwealth of Virginia reserves all rights, including, but not limited to, ownership, title, intellectual property rights and all other rights and interest in and to any computer programs (in object or source code format or any other form), know-how, inventions, processes, data bases, documentation, training materials and any other intellectual property and any tangible embodiments of it (collectively "Intellectual Property" or "IP") that Authorized User or the Commonwealth of Virginia makes available to Supplier (collectively "Authorized User IP").

**Supplier Owns Supplier IP.** Supplier reserves all rights, including, but not limited to, ownership, title, and all other rights and interest in, and to, any Intellectual Property that Supplier owned prior to providing Services under the Contract, any Intellectual Property that Supplier develops, creates, or otherwise acquires independently of this Contract, and any Intellectual Property that Supplier develops, creates, or otherwise acquires (excluding Authorized User IP) while performing Services under the Contract.

**Authorized User Ownership of Delivered Software.** Upon the effective date of this Contract, neither party contemplates that the Authorized User of the Commonwealth of Virginia will order customized deliverables from Supplier that will result in the transfer of any ownership rights of software or other proprietary data from Supplier to the Authorized User or the Commonwealth of Virginia. Prior to any obligation of Supplier to transfer such rights, a written amendment to this Contract shall be executed by authorized representatives of both parties expressly identifying the subject intellectual property and identifying the ownership rights that will be transferred.

**S. Compliance with Law.** The parties will observe all applicable laws and regulations, including export and re-export laws and regulations, when using the Products and work product of any Services.

**T. Entire Contract**

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

Exhibit A Supplier Response to Request for Proposal

Exhibit B Mean Time Between Failure (provided by supplier)

Exhibit C Prices

Exhibit D Maintenance and Service Level Agreements (SLAs)

Exhibit E Software Publisher's EULA, as amended (for reference only)

Exhibit F Certification Regarding Lobbying

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

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

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

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

Supplier

By:   
(Signature)

Name: Lizanne Kiel  
(Print)

Title: Area Vice President - Mid-Atlantic

Date: 4/16/11

Address for Notice:

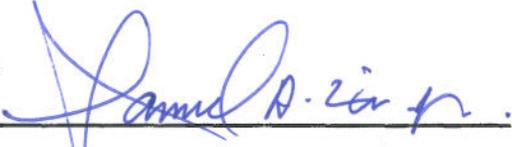
Avaya Inc.

211 Mt. Airy Rd.

Basking Ridge, NJ 07920

Attention: Vice President, Law

VITA

By:   
(Signature)

Name: Samuel A. Nixon Jr.  
(Print)

Title: Chief Information Officer

Date: 4/26/2011

Address for Notice:

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

Attention: Contract Administrator



## 5. FUNCTIONAL AND TECHNICAL REQUIREMENTS

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

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

The acceptable codes for Column A are as follows:

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

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

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

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

### A. General

	Requirements	A	B
1.	You have agreed that your proposed solution will provide a complete manufacturer's catalog, including all network equipment products and related services. Please provide detail on how this will be accomplished.	Y	Avaya will provide a complete network equipment products and services catalog for the Avaya Data Networking Product Portfolio. The catalog will be provided in the form of a CIF catalog as described in the eVA Catalog Manual. The Avaya Network Products Price List will also be posted on the Avaya web site as described in section 6 of our marketing plan. Avaya currently provides a product catalog with its existing VITA Networking Hardware and Services Contract.
2.	You have agreed that your proposed solution will be available for sale to all public bodies in the entire Commonwealth of Virginia. Please provide detail on how this	Y	Avaya currently has over 8 account representatives and 6 pre-sales engineers located across the Commonwealth to service the



	Requirements	A	B
	will be accomplished.		entire Virginia geography. Our representatives service each primary location in Virginia from Southwest Virginia, to Tidewater, to the Shenandoah Valley, to Central Virginia, and up through the Northern Virginia corridor.
3.	You have agreed that your proposed solution will provide the related services to of all public bodies in the entire Commonwealth of Virginia. Please provide detail on how this will be accomplished.	Y	Avaya has the ability as a services organization to maintain any customer via support and installation services in the Commonwealth of Virginia. Avaya is a global services organization which offers managed and direct services offerings to some of the largest customer bases in Virginia.
4.	Will your proposed solution provide free pre-sales equipment configuration services? Please provide detail.	Y	All eligible parties, public entities and customers wishing to utilize the VITA networking hardware and services vehicle will have access to free pre-sales configuration and support through Avaya's local, national and global pre-sales resources. These resources include pre-sales engineers, phone support services that may be available and online configuration tools. Please note site surveys or site/network audits may NOT be free of charge.
5.	Will your proposed solution be dependent upon subcontractors or alliances?	N	The Avaya solution is not dependant on subcontractors.
6.	VITA encourages Suppliers to develop a catalog website that interfaces with eVA. Will your company produce a punch-out catalog website? Refer to: <a href="http://www.eva.virginia.gov/vendors/pages/catalogcreation.htm">http://www.eva.virginia.gov/vendors/pages/catalogcreation.htm</a> Please provide either screen shots or a link to serve as an example.	N	Avaya is currently in discussions both internally and externally to develop a catalog website that interfaces with eVA. At this time there is no firm commitment in the next 6 months. However, it is a priority with the local account team and Avaya to continue to pursue a solution with eVA. Avaya is also continuing to expand Order Centre, which is a web based order placement and status capability that is well used on a global basis by Avaya channels and distributors. Avaya's end state strategy is to expand web ordering and status



	Requirements	A	B
			capability to end customers. Proposed start date – September 2011.
7.	Do you currently interface, via a punch out to your application, with existing customer e-procurement portals similar to the Commonwealth's eVA portal solution?	Y	Avaya currently does interface via a punch out with a limited amount of existing customers that are similar to eVA.
8.	Will your proposed solution have a catalog website up, functioning and interfacing with eVA within 30 days of contract award?	Y	Avaya intends to be interfacing with eVA via CIF catalog within 30 days of contract award.
9.	Will your proposed solution provide to authorized users, at no cost, samples of products prior to making a final determination of purchase? (Samples will be returned to supplier)	Y	Samples of products as well as demonstration equipment can and will be made available at the customers request. Demonstration products or samples must be returned within 30 days of receipt and availability of sample products will vary based on inventory of demonstration resources.
10.	Will your proposed solution provide product incentives, credits and or rebate programs? Please provide details.	Y	Avaya will often provide incentives to its customers through this contract vehicle. Incentives usually include but are not limited to increased discounts for trading in old equipment regardless of vendor or incentives tied to a unified communications package where a customer would see benefits in purchasing multiple platforms or product types.
11.	Will your proposed solution offer volume - tiered discounts on products? Please provide details.	N	Any additional discounts are tied to product incentives and marketing programs that are available.
12.	Will you proposed solution provide additional discounts on equipment and services? Please provide details.	Y	There will be occasions where additional discounts on equipment and services may be offered. These occasions will generally be tied to product trade-ins or cross platform selling where we may provide additional discount and services in a unified communications solution.
13.	Will your firm provide any additional related services that would be an added value to the Commonwealth? Please describe and	Y	Avaya will provide each customer that has purchased a product or services solution from Avaya with



	Requirements	A	B
	provide examples.		an annual report that will be delivered by July 1st each year. The annual report will consist of a summary of all items purchased the previous 12 months, maintenance due dates for any products that have been purchased off of the VITA networking state contract and a summary of all trouble tickets that have been opened the previous 12 months.

## B. Marketing

	Requirements	A	B
1.	Will your firm provide a dedicated account manager for the duration of any contract? Please provide details.	Y	Avaya will provide a dedicated account manager or account managers and pre-sales engineering resources for the duration of the contract.
2.	Will your firm market and promote any resulting contract to schools, universities, local and non-Executive Branch state agencies? Please provide a marketing plan and examples of marketing tools.	Y	Please refer to Attachment 5.B.2 - Marketing Plan which includes examples of marketing tools.
3.	Will your proposed solution include participation in vendor expositions such as the DGS Forum and/or the VAGP vendor products expo with the intent to promote any resulting contract? Please provide details.	Y	<p>Avaya is planning to participate at the following industry events/expositions. Avaya will promote the resulting contract to clients and attendees through its exhibit booth or table signage and promotional brochure handout.</p> <ol style="list-style-type: none"> <li>1. COVITS (Commonwealth of Virginia’s Innovative Technology Symposium), Richmond, September 7-8, 2011</li> <li>2. APCO NENA (Association of Public-Safety Commonwealth Officers) Virginia Beach (May 18-20, 2011) &amp; Roanoke (Oct. 25-28, 2011) Events</li> <li>3. ETLC (Education Technology Leadership Conference) Roanoke</li> <li>4. Education Technology Policy Summit 2011 April 12-13, 2011, Washington, DC</li> <li>5. Regional Product Updates</li> </ol>



	Requirements	A	B
			(Richmond & Fairfax) 6. EBC (Executive Briefing Center) Herndon, VA (New EBC for 2011 located in Fairfax, VA) See additional information in Attachment 5.B.2 Marketing Plan.
4.	Will your firm provide a customer support program for the duration of any resulting contract? Please describe your firm's ability to keep users informed of new products, changes in technology, advanced specification documentation and other market information.	Y	Avaya will provide customer support thru: <ul style="list-style-type: none"> <li>• Local Marketing Events</li> <li>• <a href="http://www.avaya.com/usa/resources">www.avaya.com/usa/resources</a></li> <li>• Access to a Dedicated Account Team</li> <li>• Online Webinar/Conference Calls in regards to a specific Technology or Product Announcements</li> <li>• Local User Group; International Avaya Users Group (IAUG)</li> <li>• Product Roadshows</li> <li>• Customized Customer Product Roadmaps</li> <li>• <a href="http://support.avaya.com">http://support.avaya.com</a></li> </ul>
5.	Will your firm provide, upon request by an authorized user, product brochures/literature at no cost?	Y	Avaya product brochures and marketing literature are typically available 24 x 7 from the Avaya corporate website <a href="http://www.avaya.com">www.avaya.com</a> at no cost. These resources are housed and searchable for download by navigating to the "Resource Library" link found in the lower banner at the bottom of the website <a href="http://www.avaya.com/usa/resources">www.avaya.com/usa/resources</a> . Content type available include the following: <ul style="list-style-type: none"> <li>• Application notes</li> <li>• Articles</li> <li>• Awards</li> <li>• Brochures</li> <li>• Case Studies</li> <li>• Demos</li> <li>• eBooks</li> <li>• Fact Sheets</li> <li>• Podcasts</li> <li>• Section 508 VPATs</li> <li>• Tools</li> </ul>



	Requirements	A	B
			<ul style="list-style-type: none"> <li>Videos</li> <li>White papers</li> </ul> <p>Such literature covers the Avaya portfolio or products and services in the following categories:</p> <ul style="list-style-type: none"> <li>Contact Center Solutions</li> <li>Data Networking Solutions</li> <li>Unified Communication Solutions</li> <li>Avaya Services</li> </ul>
6.	Will your firm provide any additional marketing services that would be an added value to the Commonwealth? Please describe and provide details.	Y	Avaya’s intent is to advertise/display the awarded VITA contract # and associated info at all SLE (State, Local and Education) marketing/customer events in the Commonwealth.

### C. Reports

	Requirements	A	B
1.	Will your proposed solution provide reports detailing equipment that has been ordered by authorized users? Please provide examples.	Y	Avaya (at the time known as Nortel) was very successful and efficient with reporting all of its sales to VITA. A sample copy of the report we are accustomed to sending can be found in Attachment 5.C.1. Avaya plans to continue this reporting format moving forward with the next version of the contract.
2.	Will your proposed solution provide reports detailing where the equipment has been installed? Please provide examples.	Y	Similar answer to question C.1. The report Avaya will provide and has provided in the past outlines where the equipment is being shipped to.
3.	Will your proposed solution provide trouble log reports? Please provide examples.	Y	Each customer will have access to trouble log reports. Each customer that purchases or has purchased off of the VITA state contract is assigned a “SOLD TO” number identifies their history for all trouble reports. If desired, a customer may receive a quarterly or yearly report on all trouble tickets that have been opened. Avaya will also include this information in a customer annual



	Requirements	A	B
			report Avaya will be sending to its customers that is explained in Section C.5.
4.	Will your proposed solution offer any additional inventory management reports that would be an added value to the Commonwealth? Please provide details.	Y	Avaya keeps updated records tracking all inventory for Maintenance and Warranty purposes. Upon request from the customer, an updated inventory report for product that has been purchased off of the contract can be made available to the customer. Otherwise an inventory status report would be made available on a yearly basis to the customer showing details of what Avaya product they have purchased, where it is located and when their maintenance is set to expire.
5.	Will your proposed solution provide additional reports that would be an added value to the Commonwealth? Please provide details.	Y	Avaya will provide each customer that has purchased a product or services solution from Avaya with an annual report that will be delivered by July 1st each year. The annual report will consist of a summary of all items purchased the previous 12 months, maintenance due dates for any products that have been purchased off of the VITA networking state contract and a summary of all trouble tickets that have been opened the previous 12 months.

**D. Ordering**

	Requirements	A	B
1.	Will your firm respond to an order within one (1) business hour? Please provide detail on how this will be accomplished.	F	Avaya will be able to respond to the customer entity within an hour of an order being placed notifying the purchasing contact that an order has been received. However, it has not been finalized as to how this notification will take place. Either an email will be sent to the purchasing entity upon receipt of an order or and online



	Requirements	A	B
			process will be initiated for the purchasing party to view.
2.	Will your firm ship all “in-stock” items, not requiring configuration or installation, within 24 hours of receiving the order? Please provide details.	Y	Avaya will ship all in stock non-configured customer installable items with 24 hours of receiving an order.
3.	Will your proposed solution have an in-house order tracking system that can be accessed 24hrs per day X 7 days a week by an authorized user? Please provide details.	Y	Please refer to Attachment 5.D.3 Order Tracking Screenshots (sample).
4.	Will your proposed solution include restocking fees for returned standard off-the-shelf products? If so, please list.	Y	Change or cancellation prior to Delivery Date – No Charge Change or cancellation after Delivery Date, but prior to Installation Start Date AND Avaya is installing the Product – 15% of Product and related installation fees.  In the event of a permitted cancellation, all preliminary or advance Products that have been delivered to VITA will be returned promptly to Avaya in the original, unopened packaging and in the same condition as delivered. No other changes or cancellations are permitted.

**E. Warranty, Service and Maintenance**

	Requirements	A	B
1.	During the warranty period, will your firm replace or repair failed hardware at no additional cost to an authorized user?	Y	Avaya warrants to the authorized user that during the applicable warranty period, the Product (hardware and software) will conform to and operate in accordance with the applicable Documentation (Avaya information manuals containing operating instructions and performance specifications that Avaya generally makes available to users of its products and delivers with the Products) in all material respects. The Products are not fault-tolerant and are not designed, manufactured or



	Requirements	A	B
			<p>intended for any use requiring fail-safe performance in which the failure of a Product could lead to death, serious personal injury, severe physical or environmental damage ("High Risk Activities"). This includes the operation of aircraft or nuclear facilities. Authorized user agrees not to use, or license the use of, the Products in connection with any High Risk Activities.</p> <p>Warranty Period. Unless a different period is specified in the applicable order, the warranty periods for Products are as follows: (i) hardware: 12 months, beginning on the In-Service Date for Avaya-installed hardware and on the Delivery Date for all other hardware; and/or (ii) software and software media: 90 days, beginning on the In-Service Date for Avaya-installed software and on the Delivery Date for all other software.</p> <p>If a Product is not in conformance with the warranty above and Avaya receives from authorized user during the applicable warranty period a written notice describing in reasonable detail how the Product failed to be in conformance, Avaya at its option will: (i) repair or replace the Product to achieve conformance and return the Product to authorized user; or (ii) refund to authorized user the applicable fees upon return of the non-conforming Product to Avaya. For software warranty claims, authorized user must provide Avaya with information in sufficient detail to enable Avaya to reproduce and analyze the failure and must provide remote access to the affected Products.</p> <p>If a Product is returned within the applicable warranty period subject</p>



	Requirements	A	B
			to a valid warranty claim, Avaya will not charge for any repair, replacement, error identification or correction, or return shipment of the non-conforming Product. If Avaya determines that the Product was operating in conformance with its applicable warranty, Avaya may charge authorized user for error identification or correction efforts, repair, replacement and shipment costs at Avaya's then current rates.
2.	Will your warranty replacement hardware and system software be equal to or better than, and compatible with, the hardware and system software being replaced?	Y	Replacement hardware may be new, factory reconditioned, refurbished, re-manufactured or functionally equivalent and will be furnished only on an exchange basis. Returned hardware that has been replaced by Avaya will become Avaya's property. Replacement Products are warranted as above for the remainder of the original applicable Product warranty period.
3.	Will your replacement hardware/system software/parts assume the warranty coverage terms of the replaced hardware and system software?	Y	Replacement hardware/system software/parts will carry the remainder of the warranty term of the replaced hardware and/or system software.
4.	Will your firm honor all warranties extending beyond the expiration or cancellation of any resulting contract as if the contract were still in effect on all hardware, replacement hardware and system software?	Y	Avaya will honor all warranties extending beyond the expiration or cancellation of any resulting contract as if the contract were still in effect on all hardware, replacement hardware and system software.
5.	Will your firm use service technicians who have and maintain current industry-required certifications? Please provide details.	Y	If a service technician is called upon to meet the terms and conditions of a major outage response then a certified technician would be deployed. Access to certified techs for technical on-site response are only available to those VITA customers who pay for enhanced onsite response support. Standard



	Requirements	A	B
			warranty for all products referenced in this response from Avaya do not entitle a customer to immediate onsite response from a certified technician.
6.	If requested by an authorized user, will your firm provide loaner equipment if the proposed equipment will be out of operation for more than 24 hours? If so, please provide details.	N	It is not standard practice at Avaya to utilize loaner equipment as a means to service an outage. Avaya provides multiple levels of hardware and software replacement response which include the following, Next Business Day Replacement, 8x5 Monday through Friday, and 24x7 replacement options. While it is not out of the question that loaner equipment could be used in an emergency situation if requested by a VITA customer, Avaya will not guarantee that loaner equipment would be made available upon request.

Product Life-Cycle



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**EXHIBIT B – MEAN TIME BETWEEN FAILURE**

Supplier shall provide manufacturer's Mean Time Between Failure (MTBF) data to VITA for all equipment offered under the Contract upon request.

## **Exhibit D**

### **Maintenance and Service Level Agreements**

These Maintenance/Managed Services Terms apply if and to the extent Authorized User acquires Maintenance/Managed Services.

#### **1. ORDER, PROVISION AND SCOPE OF SERVICES**

**1.1 Order and Provision of Services.** In return for the payment of the fees specified in the order, Supplier will provide the Maintenance/Managed Services options for Supported Products or Supported Systems at Supported Sites, as described further in this Attachment and the SAS (for purposes of this Attachment, "Services"). The "Service Agreement Supplement" or "SAS" is the applicable Supplier Service Agreement Supplement then current as of the date of Supplier's acceptance of an order for Services and available to Authorized User upon request. The parties may execute a statement of work describing specific Services to be provided by Supplier ("Statement of Work" or "SOW"). As used in this Attachment, "SAS" refers to the Service Agreement Supplement or Statement of Work, as applicable. "Supported Products" are: (i) hardware or software products identified in the order; and (ii) Added Products (defined in Section 1.9). Supported Products may include non-Supplier products to the extent they are specified in the order. "Supported Systems" are a group of products or networks specified in the order. "Supported Sites" are locations specified in the order.

**1.2 Documents and Order of Precedence.** Unless otherwise provided for in these Maintenance/Managed Services Terms, in the event of conflict among the General Terms, these Maintenance/Managed Services Terms; the SAS and any ancillary attachments to or documents referenced in the SAS, the order of precedence is: (i) these Maintenance/Managed Services Terms; (ii) the General Terms; (iii) SAS; and (iv) ancillary documents, except that in relation to limitations of liability, licensing provisions, intellectual property rights and indemnification, the provisions contained in the General Terms will always take priority.

**1.3 Monitoring.** Supplier may electronically monitor Supported Products and Supported Systems for the following purposes: (i) remote diagnostics and corrective actions; (ii) to determine system configuration and applicable charges; (iii) Supplier shall provide forty-five (45) days' written notice to the Authorized User prior to scheduling any software license audit. The notice shall specify name(s) of individual(s) who will conduct the audit, the duration of the audit and how the audit will be conducted. Further, the Supplier and its representatives, agents and subcontractors shall comply with any access, security and confidentiality requirements and restrictions of the Authorized User. No penalty shall be levied against the Authorized User or the Commonwealth for unlicensed software found during the course of the audit. If the Authorized User is determined to be using unlicensed software, the maximum liability to the Authorized User shall be the cost of licensing the subject software. All costs associated with the audit shall be borne by the Supplier; (iv) when providing managed Services, to assess Authorized User needs for additional products or Services; (v) as otherwise provided in the SAS.

**1.4 Error Correction.** Some Services options may include correction of Errors. An "Error" means a failure of a Supported Product to conform in all material respects to the manufacturer's specifications that were currently applicable when the Supported Product was purchased or licensed.

**1.5 Help Line Support.** Where the selected Services option includes help line support, Supplier will provide it in accordance with the coverage option (service hours, target response intervals, etc.) that Authorized User has selected.

**1.6 Updates.** Where the selected Services option includes the provision of Updates, Supplier will make Updates available to Authorized User if, and when, the manufacturer makes them generally available to its other Authorized Users. Supplier will provide Updates via a website, email or post mail, at Supplier's option. Updates may be remotely installed by Supplier or delivered to Authorized User for self-installation. "Update" is a change in software that typically provides maintenance correction only and is designated as a change in the digit to the right of the second decimal point (e.g. n.y.[z]).

**1.7 End of Support.** Periodically, Supplier or a third party manufacturer may declare "end of life," "end of service," "end of support," "manufacture discontinue" or similar designation ("End of Support") for certain Supported Products. Authorized User may access Supplier's user support website ([www](http://www)).

support.Supplier.com) for End of Support notifications, and to register an e-mail address to receive e-mail notifications of the same, when published by Supplier. For Products subject to End of Support, Supplier will continue to provide the support described in the SAS except for the End of Support exceptions listed therein ("Extended Support"). If the support described in the SAS does not include Extended Support information, Supplier will make available the description of Extended Support (if available) for the Products concerned at the same time as its End of Support notification. For Products not subject to Extended Support, if Services are discontinued for a Supported Product, the Supported Product will be removed from the order and rates will be adjusted accordingly.

1.8 Replacement Hardware. Replacement hardware provided as part of Services may be new, factory reconditioned, refurbished, re-manufactured or functionally equivalent. It will be furnished only on an exchange basis. Returned hardware that has been replaced by Supplier will become Supplier's property,

1.9 Added Products. If Authorized User acquires additional products of the same type and manufacturer(s) as the existing Supported Products and locates them with existing Supported Products at a Supported Site, they will be considered "Added Products", and will be added to the order automatically for the remainder of the term. Added Products purchased from a party other than the manufacturer or an authorized reseller are subject to certification by Supplier at Supplier's then current Services rates. If Added Products fail certification, Supplier may choose not to add them to the Supported Products.

1.10 General Limitations. Unless the SAS provides otherwise, Supplier will provide software Services only for the unaltered current release of the software and the prior release. The following items are included in the Services only if the SAS specifically includes them: (i) support of user-defined applications; (ii) support of Supported Products that have been modified by a party other than Supplier (except for installation of standard, self-installed Updates provided by the manufacturer); (iii) making corrections to user-defined reports; (iv) data recovery services; (v) services associated with relocation of Supported Products; (vi) correction of Errors arising from causes external to the Supported Products (such as power failures or surges); and (vii) services for Supported Products that have been misused, used in breach of their license restrictions, improperly installed or configured, or that have had their serial numbers altered, defaced or deleted

## 2. INVOICING AND PAYMENT

2.1 Invoicing. Supplier will invoice Authorized User for Services in advance unless another payment option is specified in the order or SAS.

## 3. AUTHORIZED USER RESPONSIBILITIES

3.1 General. Authorized User will cooperate with Supplier as reasonably necessary for Supplier's performance of its obligations, such as: (i) providing Supplier with full, free and safe access to its facilities; (ii) providing telephone numbers, network addresses and passwords necessary for remote access; and (iii) providing interface information for Supported Products and necessary third party consents and licenses to access them. All items will be provided by Authorized User at Authorized User's expense. If Supplier provides an Update or other new release of software as part of the Services, Authorized User will implement it promptly.

3.2 Provision of Supported Products and Systems. Except for Supplier hosted facilities identified in the SAS Authorized User will provide all Supported Products, Supported Systems and Supported Sites. Authorized User continuously represents and warrants that: (i) Authorized User is either the owner of, or is authorized to access and use, each of them; and (ii) Supplier, its suppliers, and subcontractors are authorized to do the same to the extent necessary to provide the Services in a timely manner.

3.3 Moves of Supported Products. Authorized User will notify Supplier in advance before moving Supported Products.

3.4 Vendor Management. Where Supplier is to instruct or request products or services on Authorized User's behalf from third party vendors under Authorized User's supply contracts with the third party vendors ("Vendor Management"), Authorized User will provide Supplier upon request a letter of agency or similar document, in a form reasonably satisfactory to Supplier, permitting Supplier to perform the Vendor Management. Where the third party vendor's consent is required for Supplier to be able to perform

Vendor Management in a timely manner, Authorized User will obtain the written consent of the vendor and provide Supplier a copy of it upon request.

3.5 Third Party Hosting. In the event one or more network address(es) to be monitored by Supplier are associated with systems owned, managed, and/or hosted by a third party service provider ("Host"), Authorized User will: (i) notify Supplier of the Host prior to commencement of the Services; (ii) obtain the Host's advance written consent for Supplier to perform the Services on the Host's computer systems and provide Supplier with a copy of the consent upon request; and (iii) facilitate necessary communications between Supplier and the Host in connection with the Services.

3.6 Access to Personal Data. From time to time, Authorized User may require Supplier to access a Supported Product or Supported System containing employee, Authorized User or other individual's personal data (collectively, "Personal Data"). Where Authorized User instructs Supplier to access any Personal Data or a third party identified by Authorized User with access, Authorized User will (i) notify all relevant employees and other individuals of the fact that Supplier will have access to such Personal Data in accordance with Authorized User's instructions, and (ii) if permitted by law, indemnify Supplier and its officers, directors, employees, subcontractors and affiliates against, and hold each of them harmless from, any and all liabilities, costs, damages, judgments and expenses (including reasonable attorney's fees and costs) arising out of Supplier accessing or providing access in accordance with Authorized User's instructions.

#### 4. TITLE AND RISK OF LOSS TO EQUIPMENT

Title to Supplier-installed replacement hardware provided as part of Services will pass to Authorized User when installed. Title to all other hardware provided as part of Services will pass to Authorized User when it arrives at the Supported Site.

#### 5. SOFTWARE LICENSE

Where Services include provision of patches, Updates or feature upgrades for Supported Products ("New Software"), they will be provided subject to the license grant and restrictions contained in the original agreement under which Authorized User licensed the original software from Supplier. Where there is no existing license from Supplier, New Software will be provided subject to the manufacturer's then current license terms and restrictions for the New Software. New Software may include components provided by third party suppliers that are subject to their own end user license agreements. Authorized User may install and use these components in accordance with the terms and conditions of the "shrinkwrap" or "clickwrap" end user license agreement accompanying them.

#### 6. WARRANTY AND LIMITATION OF LIABILITY

6.1 Warranty. Supplier warrants to Authorized User that Services will be carried out in a professional and workmanlike manner by qualified personnel.

6.2 Remedy. If Services are not in conformance with the above warranty and Supplier receives Authorized User's detailed request to cure a non-conformance within thirty (30) days of its occurrence, Supplier will re-perform those Services. This remedy will be Authorized User's sole and exclusive remedy and will be in lieu of any other rights or remedies Authorized User may have against Supplier with respect to the non-conformance of Services.

6.3 Disclaimer. Services provided to enhance network security are not a guaranty against malicious code, deleterious routines, and other techniques and tools employed by computer "hackers" and other third parties to create security exposures. Neither Supplier nor its suppliers make any warranty, express or implied, that all security threats and vulnerabilities will be detected or that the Services will render an end user's network or particular network elements safe from intrusions and other security breaches.

## 7. TERM AND TERMINATION

Term. Unless a different term is mandated in the applicable SAS, Supplier will provide Services for an initial term of one year. Unless otherwise specified in the SAS, Authorized User may terminate Services in whole or in part upon 30 days written notice subject to cancellation fees equal to maintenance Service fees for 12 months or the remaining term, whichever is less.

**EXHIBIT F**

**CERTIFICATION REGARDING LOBBYING**

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

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

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

Signature:

Matthew J. McNeel

Printed Name:

Matthew J. McNeel

Organization:

Avaya

Date:

2-4-11