Commonwealth of Virginia
Virginia Information Technologies Agency

NETWORK EQUIPMENT & SERVICES

Optional Use

Date:	January 29, 2015
Contract #:	VA-110418-ELSY
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:	Electronic Systems, Inc. 369 Edwin Drive Virginia Beach, VA 23462
FIN:	54-1145980
Contact Person:	John Hagerty Voice: 804-402-1371 Email: John.Hagerty@esi.net
Term:	April 26, 2015 – April 25, 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
E-Mail: james.mackenzie@vita.virginia.gov
Fax: 804-416-6361

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

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

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

VA-110418-ELSY
CONTRACT CHANGE LOG

Change No.	Description of Change	Effective Date
1	Extends contract term	04/26/12
2	Extends contract term	04/26/13
3	Extends contract term	04/26/14
4	Mod 1 adds clauses to clarify/define certain terminology used in the contract	07/14/14
5	Extends contract term	04/26/15

COMMONWEALTH of VIRGINIA

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

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

TDD VOICE -TEL. NO.
711

January 29, 2015

Electronic Systems, Inc.
369 Edwin Drive
Virginia Beach, VA 23462
Contact Person: John Hagerty

Per Section 3.A. ("Term and Termination") of contract VA-110418-ELSY, The Virginia Information Technologies Agency has elected to exercise its option to renew the contract for one year, from 4/26/15 through 4/25/16. 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-ELSY
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
ELECTRONIC SYSTEMS, INC.

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

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 4.
   "Authorized Users 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 E on Contract Page 8.
   "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 19.
   "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 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 24-25.
   "In the event of a 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 Pages 27-28.
   "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-ELSY 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	COMMONWEALTH OF VIRGINIA
BY: Electronic Systems Inc.	BY: Doug Crenshaw
NAME: John Hagerty	NAME: Doug Crenshaw
TITLE: SALES DIRECTOR	TITLE: Vita Sourcing Mgr
DATE: July 11, 2014	DATE: 7/14/14

John Hagerty

COMMONWEALTH of VIRGINIA

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

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

TDD VOICE -TEL. NO.
711

April 10, 2014

Electronic Systems, Inc.
369 Edwin Drive
Virginia Beach, VA 23462
Contact Person: John Hagerty

Per Section 3.A. ("Term and Termination") of contract VA-110418-ELSY, The Virginia Information Technologies Agency has elected to exercise its option to renew the contract for one year, from 4/26/14 through 4/25/15. 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
11751 Meadowville Lane
Chester, Virginia 23836-6315
(804) 416-6100

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

TDD VOICE -TEL. NO.
711

March 11, 2013

Electronic Systems, Inc.
369 Edwin Drive
Virginia Beach, VA 23462
Contact Person: John Hagerty

Per Section 3.A. ("Term and Termination") of contract VA-110418-ELSY, The Virginia Information Technologies Agency has elected to exercise its option to renew the contract for one year, from 4/26/13 through 4/25/14. Should you have any questions, please feel free to contact me.

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

COMMONWEALTH of VIRGINIA

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

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

TDD VOICE -TEL. NO.
711

March 22, 2012

Electronic Systems, Inc.
369 Edwin Drive
Virginia Beach, VA 23462

Contact Person: John Hagerty

Per Section 3.A. ("Term and Termination") of contract VA-110418-ELSY, The Virginia Information Technologies Agency has elected to exercise its option to renew the contract for one year, from 4/26/12 through 4/25/13. 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

Electronic Systems, Inc.

Appendix C
RFP 2011-05
Network Equipment & Services

Brocade

Product Category	Delivery Lead Time *(In Days ARO)*	Spend (Per order)	State Discount % *(Off Publically Available Price List)*	Academic Discount % *(Off Publically Available Price List)*
Switches		$0-$100,000	41%	41%
		$100,001- $250,000	41%	41%
		$250,001- $375,000	41%	41%
		$375,001- $500,000	41%	41%
		$500,001- Plus	41%	41%
Routers		$0-$100,000	41%	41%
		$100,001- $250,000	41%	41%
		$250,001- $375,000	41%	41%
		$375,001- $500,000	41%	41%
		$500,001- Plus	41%	41%
Security *(Firewalls)*		$0-$100,000	41%	41%
		$100,001- $250,000	41%	41%
		$250,001- $375,000	41%	41%
		$375,001- $500,000	41%	41%
		$500,001- Plus	41%	41%
Wireless		$0-$100,000	41%	41%
		$100,001- $250,000	41%	41%
		$250,001- $375,000	41%	41%
		$375,001- $500,000	41%	41%
		$500,001- Plus	41%	41%
Maintenance		$0-$100,000	20%	20%
		$100,001- $250,000	20%	20%
		$250,001- $375,000	20%	20%
		$375,001- $500,000	20%	20%
		$500,001- Plus	20%	20%
ESI Services		$0-$100,000	10%	10%
		$100,001- $250,000	10%	10%
		$250,001- $375,000	10%	10%
		$375,001- $500,000	10%	10%
		$500,001- Plus	10%	10%
All additonal equipment required for IT operations.		$0-$100,000	15%	15%
		$100,001- $250,000	15%	15%
		$250,001- $375,000	15%	15%
		$375,001- $500,000	15%	15%
		$500,001- Plus	15%	15%

Price List URL: http://b1400.www.brocade.com/home/pricefile.html

Supplier is to provide the URL to the publicly available pricelist.

Delivery Terms: F.O.B. Destination

Appendix C
RFP 2011-05
Network Equipment & Services

Service Description	Hourly Rate *(Normal business hours- 8am to 5pm)*	Hourly Rate *(After normal business hours)*
Network equipment architecture and design services	**$126**	**$148**
Equipment initial installation/configuration services	**$126**	**$148**
Equipment update/upgrade services	**$102**	**$102**
Equipment repair services	**$102**	**$102**
Technical support services *(Standard)*	**$102**	**$102**
Technical support services *(Premium)*	**$126**	**$148**
Engineering services *(Standard)*	**$102**	**$102**
Engineering services *(Premium)*	**$126**	**$148**
Training	**$126**	**$148**
Other Applicable Services: All ESI Services	***10% discount***	***10% discount***

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.

Appendix C
RFP 2011-05
Network Equipment & Services

Hewlett Packard

Product Category	Delivery Lead Time *(In Days ARO)*	Spend (Per order)	State Discount % *(Off Publically Available Price List)*	Academic Discount % *(Off Publically Available Price List)*
Switches		$0-$100,000	42%	42%
		$100,001- $250,000	42%	42%
		$250,001- $375,000	42%	42%
		$375,001- $500,000	42%	42%
		$500,001- Plus	42%	42%
Routers		$0-$100,000	42%	42%
		$100,001- $250,000	42%	42%
		$250,001- $375,000	42%	42%
		$375,001- $500,000	42%	42%
		$500,001- Plus	42%	42%
Security *(Firewalls)*		$0-$100,000	42%	42%
		$100,001- $250,000	42%	42%
		$250,001- $375,000	42%	42%
		$375,001- $500,000	42%	42%
		$500,001- Plus	42%	42%
Wireless		$0-$100,000	42%	42%
		$100,001- $250,000	42%	42%
		$250,001- $375,000	42%	42%
		$375,001- $500,000	42%	42%
		$500,001- Plus	42%	42%
Maintenance		$0-$100,000	20%	20%
		$100,001- $250,000	20%	20%
		$250,001- $375,000	20%	20%
		$375,001- $500,000	20%	20%
		$500,001- Plus	20%	20%
ESI Services		$0-$100,000	10%	10%
		$100,001- $250,000	10%	10%
		$250,001- $375,000	10%	10%
		$375,001- $500,000	10%	10%
		$500,001- Plus	10%	10%
All additonal equipment required for IT operations.		$0-$100,000	15%	15%
		$100,001- $250,000	15%	15%
		$250,001- $375,000	15%	15%
		$375,001- $500,000	15%	15%
		$500,001- Plus	15%	15%

HP Price List URL: http://h18000.www1.hp.com/showroom/ipl.html

Delivery Terms: F.O.B. Destination

Appendix C
RFP 2011-05
Network Equipment & Services

Service Description	Hourly Rate *(Normal business hours- 8am to 5pm)*	Hourly Rate *(After normal business hours)*
Network equipment architecture and design services	**$126**	**$148**
Equipment initial installation/configuration services	**$126**	**$148**
Equipment update/upgrade services	**$102**	**$102**
Equipment repair services	**$102**	**$102**
Technical support services *(Standard)*	**$102**	**$102**
Technical support services *(Premium)*	**$126**	**$148**
Engineering services *(Standard)*	**$102**	**$102**
Engineering services *(Premium)*	**$126**	**$148**
Training	**$126**	**$148**
Other Applicable Services: All other ESI Services	***10% discount***	***10% discount***

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.

HARDWARE AND MAINTENANCE CONTRACT
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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 Electronic Systems, Inc. ("Supplier"), a corporation headquartered at 369 Edwin Drive, Virginia Beach, VA 23462 to be effective as of April 26, 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.

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.

L. Receipt (of Product)
An Authorized User or its Agent has physically received the Product at the correct "ship to" location.

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.

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, as well as any applicable documentation.

3. TERM AND TERMINATION

A. Contract Term
This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, shall continue to be effective and legally binding for a period of 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.

D. Termination for Non-Appropriation of Funds

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

E. Effect of Termination

Upon termination, neither the Commonwealth, nor VITA, nor any Authorized User shall have any future liability except for 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. In the event of a termination for breach and/or default of Supplier, Supplier shall provide such assistance at no charge or fee to VITA or any Authorized User; otherwise, Supplier shall provide such assistance at the hourly rate or a charge agreed upon by Supplier and VITA or an Authorized User.

G. Contract Kick-Off Meeting

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

H. Contract Closeout

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

4. DELIVERY, INSTALLATION AND ACCEPTANCE

A. Delivery Procedure

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

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

B. Late Delivery

Supplier hereby acknowledges and agrees that failure to deliver the Product ordered in strict accordance with the agreed upon delivery schedule determined in accordance with this Section shall constitute a material breach of this Contract resulting in damages to the ordering Authorized User, the total sum of which would be impracticable or difficult to ascertain as of the Effective Date of this Contract. As an estimate of the minimum amount of damages such Authorized User will suffer, Supplier agrees to credit the Authorized User an amount equal to one-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 fifteen percent (15%) of the total purchase price. Any credit due the Authorized User will be applied to the next periodic invoice.

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

C. Product Trade-in and Upgrade

To be proposed by supplier.

D. Product Installation

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

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

E. Product Acceptance

Product shall be deemed accepted when the ordering Authorized User determines that such Product successfully operates in accordance with the Requirements. Such Authorized User shall commence Acceptance testing within five (5) days, or within such other period as set forth in the applicable order, after Receipt/installation of the Product. Acceptance testing will be no longer than 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.

F. Cure Period

Supplier shall correct any non-conformities identified during Acceptance testing and re-submit such previously non-conforming Product for re-testing within seven (7) days of written notice of non-conformance, or as otherwise agreed between the Authorized User and Supplier in the applicable order. Should Supplier fail to cure the non-conformity or deliver Product which meets the Requirements, such Authorized User may, in its sole discretion: (i) reject the Product in its entirety and recover amounts previously paid hereunder; (ii) issue a "partial Acceptance" of the Product with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Product while reserving its right to revoke Acceptance if timely

correction is not forthcoming. Failure of a Product to meet, in all material respects, the Requirements after the second set of acceptance tests may constitute a default by Supplier. In the event of such default, the Authorized User may, at its sole discretion, terminate its order, in whole or in part, for the Product and any Services to be provided thereunder by Supplier.

G. Product Discontinuation

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

5. PRODUCT SUPPORT AND ADDITIONAL SERVICES

A. Authorized User or Third Party Support

1. Documentation and Support Availability

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

2. Timeliness and Price

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

B. Engineering Changes and Product Modification

For each Authorized User that purchased Product, Supplier agrees to document and provide to such Authorized User any and all planned engineering changes to the Product ninety (90) days prior to incorporation. All engineering changes which affect the safety of the Product ("Safety Changes") or the ability of the Product to meet the published specifications ("Performance Changes"), shall be made at no cost to the Authorized User. Supplier shall install all Safety Changes and Performance Changes within thirty (30) days after issuance of the engineering change order by the Product manufacturer. If such engineering changes affect Product processing or operating capability, they shall be scheduled at the Authorized User's request as to time and at the Authorized User's option. The Authorized User shall have the option to waive 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 new/certifiable as new spare parts and the Maintenance Services identified in the Maintenance Services section herein and Exhibit D hereto for each Product type ordered by an Authorized User, for five (5) years from the expiration of the initial Warranty Period of the last unit of any given Product type provided by Supplier to such Authorized User. Thereafter, Supplier shall advise such Authorized User of its intent to discontinue either certain parts or maintenance services for any Product type ordered by the Authorized User.

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

E. Inventory Record

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

F. Product Service Record

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

G. Additional Services

In addition to any on-site warranty or maintenance service obligations, Supplier shall, upon request of an Authorized User by means of 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, service on equipment not covered by this Contract; 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.. 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.

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 forty-eight (48) 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**
   Service(s) shall be deemed accepted when the Authorized User determines that such Service(s) meets the Requirements set forth in the applicable SOW. If applicable, Supplier shall be responsible for ensuring that any individual Deliverable functions properly with any other Deliverable provided pursuant to the SOW. Should a previously Accepted Deliverable require further modification in order to work properly with any other Deliverable, Supplier shall be responsible for all costs associated with such modification.

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

4. **Cure Period**
   Supplier shall correct any non-conformities identified during Acceptance testing and re-submit such non-conforming Service 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 Service which meets the Requirements, the Authorized User may, in its sole discretion: (i) reject the Service in its entirety, and any Service rendered unusable due to the non-conforming Service, and recover amounts previously paid hereunder for all such Services; (ii) issue a "partial Acceptance" of the Service with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Service while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of a Service to meet, in all material respects, the Requirements after the second set of acceptance tests may constitute a default by Supplier. In the event of such default, the

Authorized User may, at its sole discretion, terminate its order or SOW, in whole or in part, for the Services to be provided thereunder by Supplier.

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 be deemed a default of this Contract or of the applicable SOW.

D. Subcontractors

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

7. WARRANTY AND REMEDY

A. Supplier

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

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 without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third-party. Upon receipt of payment, the Commonwealth or the ordering Authorized User, as applicable,

shall obtain good and clear title to the Product, excluding the System Software, free and clear of all liens, claims, security interests and encumbrances.

C. Supplier Viability

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

D. 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

i). All Services shall be performed with care, skill and diligence, consistent with or above applicable professional standards currently recognized in its profession, and Supplier shall be responsible for the professional quality, technical accuracy, completeness and coordination of all plans, information, specifications, Deliverables and Services furnished under this Contract;

ii). Services pursuant to a particular Request for Proposal ("RFP"), quote, or Request for Quote (RFQ), and any associated Deliverables shall be fit for the particular purposes specified by VITA in the RFP and in this Contract and, if applicable, by the Authorized User requesting such quote or issuing such RFQ, and Supplier is possessed of superior knowledge with respect to the Services and Deliverables and is aware that all Authorized Users are relying on Supplier's skill and judgment in providing the Services and Deliverables;

iii). The Services and Deliverables shall meet or exceed the Requirements;

iv). The documentation which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow a user to understand and fully utilize the Deliverables without reference to any other materials or information.

F. Compatibility

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

v). 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;

vi). Upon delivery, all System Software shall be at the current release level unless otherwise requested by the ordering Authorized User; and

vii). The System Software shall not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any Authorized User's use of the System Software, nor shall Supplier disable any Authorized User's use of such System Software through remote access or otherwise. If the System Software contains authorization codes allowing access to a data base or other software, Supplier warrants that such codes shall be perpetual and non-expiring.

H. Performance Standards and Mean Time Between Failure

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

I. Warranty Services

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

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

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

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

1. Product Covered

Exhibit C lists all Product types covered under warranty.

2. Preventive Maintenance

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

3. Remedial Maintenance

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

4. Replacement Parts

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

5. **Spares**

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

6. **Notification and Correction of Defects**

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

7. **One-year Depot Warranty**

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

8. **On-site Warranty**

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

9. **System Software Warranty**

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

   a) New Releases

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

   b) Coverage

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

   c) Response and Restore Times

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

   d) Software Evolution

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

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

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

10. **Escalation Procedures**

    TBD based on Supplier proposal.

11. **Remedies**

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

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

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

12. Product Maintenance Services and Renewal Options

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

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

8. MAINTENANCE SERVICES

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

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

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

A. Ordering

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

i). Product and, if applicable, serial number, for which Maintenance Services shall be provided,

ii). Maintenance Level to be provided, and

iii). MCP for the Product Maintenance.

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

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

B. Renewal

At least sixty (60) days prior to the expiration of the MCP for each unit of Product, Supplier shall notify the Authorized User of such expiration, and the Authorized User, at its sole discretion, may

issue an order to Supplier to renew Maintenance Services, including System Software Maintenance Services, for an additional one (1) year period. The annual fee for Maintenance Services shall not exceed the fee charged for the preceding year's Maintenance Services by more than three percent (3%), or the annual change in CPI, as defined in the Purchase Price and Price Protection section, in effect at the time, whichever is less. Termination of this Contract or cancellation of Maintenance Services, including System Software Maintenance Services if provided as a separate offering from Supplier, by an Authorized User shall not affect this Contract or the grant of any license pursuant thereto.

C. Services

Maintenance Services shall be as follows:

1. Product Covered

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

2. Preventive Maintenance

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

3. Remedial Maintenance

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

4. Replacement Parts

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

5. Spares

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

6. Notification and Correction of Defects

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

7. Advanced Replacement Services

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

8. On-site Maintenance Services

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

9. System Software Maintenance

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

a) New Releases

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

b) Coverage

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

c) Response and Restore Times

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

d) Software Evolution

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

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

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

10. Escalation Procedures

TBD based on Supplier proposal.

11. Remedies

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

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.

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.

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

A. License Grant

Supplier hereby grants to the Commonwealth and all Authorized Users a fully paid, perpetual, worldwide, nonexclusive, transferable, irrevocable license to use, and to permit any agent of the Commonwealth or such Authorized User to use, System Software for each Product. Each license granted under this Contract authorizes the Commonwealth or such Authorized User and any agent of the Commonwealth or such Authorized User to use Supplier-licensed programs in machine readable form on any system without limitation. It is expressly understood that "perpetual" license rights shall commence upon delivery of the System Software to the Authorized User and shall exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of 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, 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.

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

D. Authorized User Compliance

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

E. No Subsequent, Unilateral Modification of Terms by Supplier ("Shrink Wrap")

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

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.

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

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

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

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

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

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

C. Purchase Price and Price Protection

Exhibit C sets forth the prices by Product type (including whole units and repairable major components thereof), 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 and Services 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 and Services 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 during the Contract term or any extensions thereof. Should Supplier choose to sponsor such a promotion, Supplier shall provide in writing to VITA, at least five (5) days prior to the promotion, the following information: (i) the dates of the promotion or the duration of the promotion to include the commencement date and the ending date; (ii) the exact Products or Services covered in the

promotion; and (iii) the pricing or percentage discount offered during the promotion. VITA shall communicate to Supplier in writing its agreement to the promotion.

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

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

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

E. Invoice Procedure

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

i). Product, Deliverable or Service type and description

ii). Product serial number, if any

iii). Quantity, charge and extended pricing for each Product and/or Service item

iv). Applicable order date

v). Ship date

vi). Ship-to location contact name

vii). This Contract number and the applicable order number

viii). Supplier's Federal Employer Identification Number (FEIN).

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

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

F. Purchase Payment Terms

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

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

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

documentation to support the charge. If such charges remain in dispute, such dispute shall be resolved in accordance with the Dispute Resolution section of this Contract. In the absence of the Supplier's written evidence identifying the merit of the disputed amounts, Authorized User may not pay the disputed amounts and may consider the matter concerning the specific identified amounts closed. All payment terms are net 30 days after Acceptance.

G. Universal Service Fund

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

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

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 default of the Contract.

B. Small Business Participation

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

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

In addition, by the 10th day of every month, Supplier shall submit to VITA the Small Business Subcontracting Monthly Report (template to be provided). The report should specify the amount

of such spend provided to small businesses. Supplier shall submit the report to SWaM@vita.virginia.gov.

14. COMPETITIVE PRICING

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

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. However, an Authorized User may disclose the Confidential Information as delivered by Supplier to subcontractors, contractors or agents of such Authorized User that are bound by non-disclosure contracts with such Authorized User. Each Party shall take the same measures to protect against the disclosure or use of the Confidential Information as it takes to protect its own proprietary or confidential information (but in no event shall such measures be less than reasonable care).

B. Exclusions

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

i). in the public domain through no fault of the receiving Party or of any other person or entity that is similarly contractually or otherwise obligated;

ii). obtained independently from a third-party without an obligation of confidentiality to the disclosing Party and without breach of this Contract;

iii). developed independently by the receiving Party without reference to the Confidential Information of the other Party; or

iv). required to be disclosed under The Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) or similar laws or pursuant to a court order.

C. Return or Destruction

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

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

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, for each individual Supplier employee or agent, additional forms which may include non-disclosure agreements to be signed by Supplier's employees or agents acknowledging that all Authorized User information with which such employees and agents come into contact while at the Authorized User site is confidential and proprietary. Any unauthorized release of proprietary or Personal information by the Supplier or an employee or agent of Supplier shall constitute a breach of its obligations under this Section and the Contract.

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

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

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 immediately gives VITA or such Authorized User adequate assurance of the future performance of this Contract or the applicable order. If bankruptcy proceedings are commenced with respect to Supplier, and if this Contract has not otherwise terminated, then VITA may suspend all further performance of this Contract until Supplier assumes or rejects this Contract pursuant to Section 365 of the Bankruptcy Code or any similar or successor provision, it being agreed by VITA and Supplier that this is an executory contract. Any such suspension of further performance by VITA pending Supplier's assumption or rejection shall not be a breach of this Contract, and shall not affect the right of VITA or any Authorized User to pursue or enforce any of its rights under this Contract or otherwise.

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

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

C. Compliance with the Federal Lobbying Act.

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

D. Governing Law

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

E. Dispute Resolution

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

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

of the date of the final decision on the claim, invokes appropriate action under §2.2-4364, Code of Virginia or the administrative procedure authorized by §2.2-4365, Code of Virginia.

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

In the event of any breach by a public body, Supplier's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. 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 not assign, subcontract, delegate or otherwise convey this Contract, or any of its rights and obligations hereunder, to any entity without the prior written consent of VITA, and any such attempted assignment or subcontracting without consent shall be void. VITA may assign this Contract to any entity, so long as the assignee agrees in writing to be bound by the all the terms and conditions of this Contract.

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

J. Captions

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

K. Severability

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

L. Survival

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

M. Force Majeure

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

N. Remedies

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

O. Right to Audit

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

ix). Three (3) years from Service performance date;

x). Performed at Supplier's premises, during normal business hours at mutually agreed upon times; and

xi). Excludes access to Supplier cost information.

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

P. Offers of Employment

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

Q. Contract Administration

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

R. Entire Contract

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

Exhibit A	Request for Proposal
Exhibit B	Mean Time Between Failure (provided by supplier)
Exhibit C	Prices
Exhibit D	Warranty, 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: N. Joyce Chapman

(Signature)

Name: N. Joyce Chapman

(Print)

Title: Corporate Secretary

Date: April 20, 2011

VITA

By: Samuel A. Nixon Jr.

(Signature)

Name: Samuel A. Nixon Jr.

(Print)

Title: Chief Information Officer

Date: 4/26/2011

Address for Notice:

369 Edwin Drive

Virginia Beach, VA 23462

Attention: Joyce Chapman

Address for Notice:

Attention: Contract Administrator

1. 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.

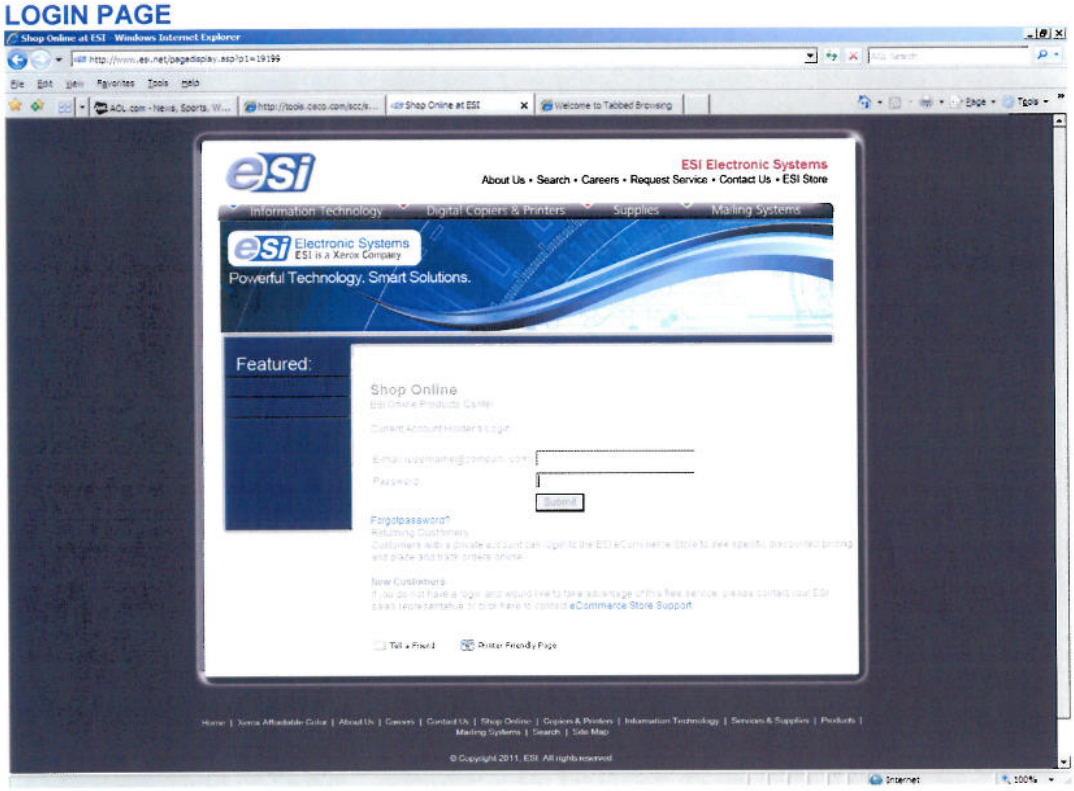
VITA has posed some open-ended questions. In those instances, Supplier is to provide adequate information to allow VITA to properly evaluate its proposal.

A. General

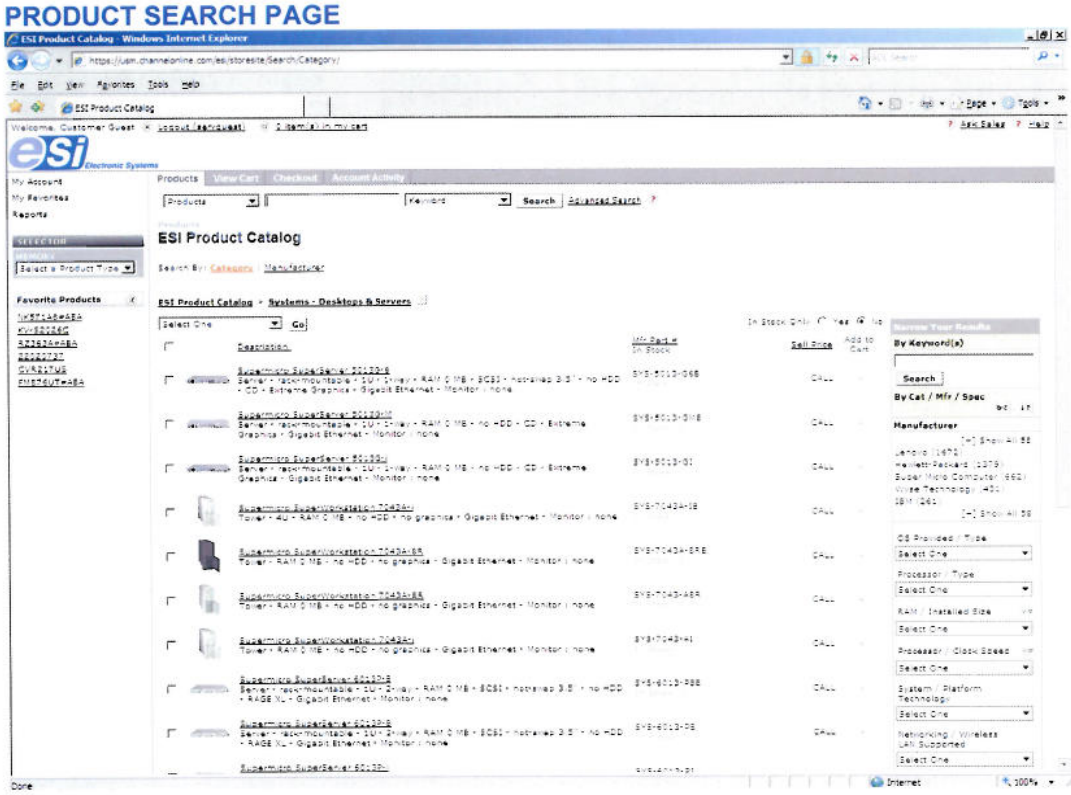
	Requirements	A	B
1	You have agreed that your proposed solution will provide a complete manufacturer's catalog, including all network equipment products and related services. Please provide detail on how this will be accomplished.	Y	**Through the ESI website store, links to all major manufacturers will be created with easy access and fingertip search capability by item number and/or description.** **This will give VITA access to hundreds of thousands of items offered by the major manufacturers we represent.**
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 will be accomplished.	Y	**All products and services included within ESI's response will be made available for sale to all public bodies in Virginia.** **This will also include sale of products added over the term of the contract.**
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	**All services within ESI's response will be made available to all public bodies in Virginia.** **This will also include services added over the term of the contract.**

4	Will your proposed solution provide free pre-sales equipment configuration services? Please provide detail.	Y	**ESI has sales and sales support personnel capable of designing and developing configurations for its customers at no cost for this pre-sales support.** **ESI has 10 dedicated sales reps focused on this VITA network contract that will work closely with their customers to provide the no cost pre-sales services. Each sales rep has assigned pre-sales engineers that will also be assisting.**
5	Will your proposed solution be dependent upon subcontractors or alliances?	Y	**ESI will be the primary reseller to the Commonwealth of Virginia, however, there may be instances where we will use a Small Business as a subcontractor. These sub-contractors would be reviewed by and approved by VITA and the agencies prior to any engagement. ESI and its manufacturers.**
6	VITA encourages Suppliers to develop a catalog website that interfaces with eVA. Will your company produce a punch-out catalog website? Refer to: http://www.eva.virginia.gov/vendors/pages/catalogcreation.htm Please provide either screen shots or a link to serve as an example.	Y	**Yes, ESI utilizes a website currently that can be customized to support this contract.** **See Screen Shots below.**

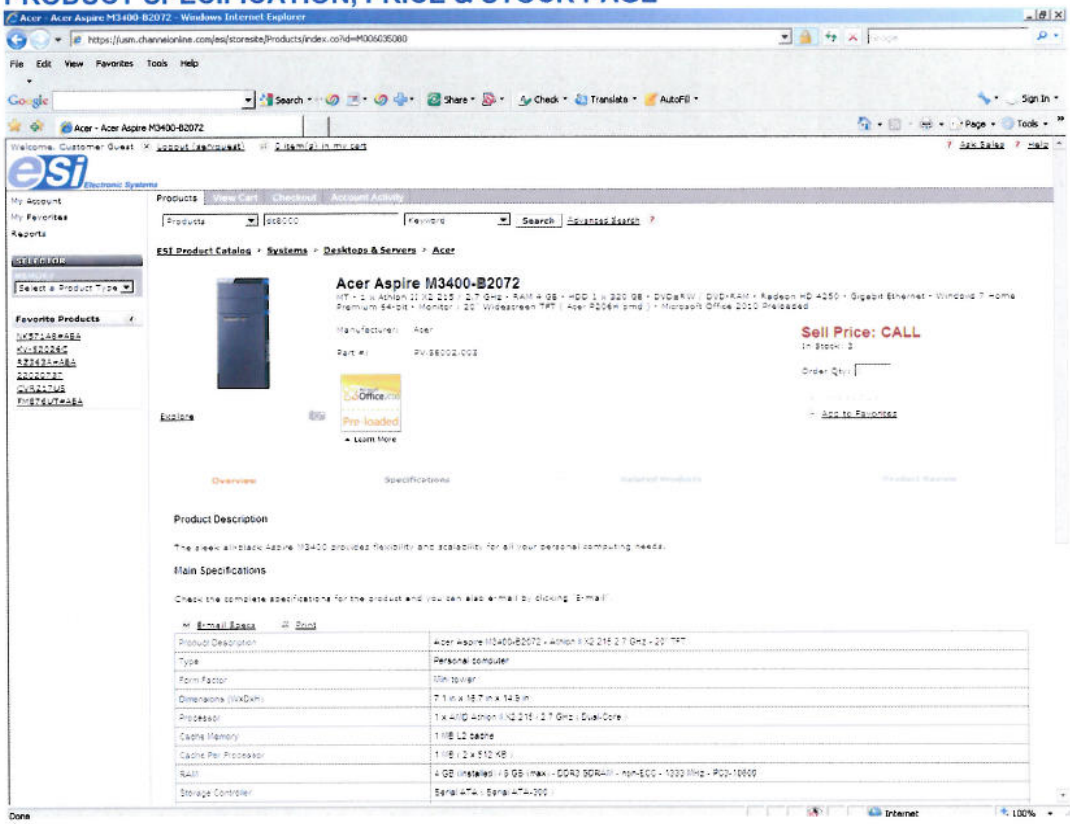
LOGIN PAGE



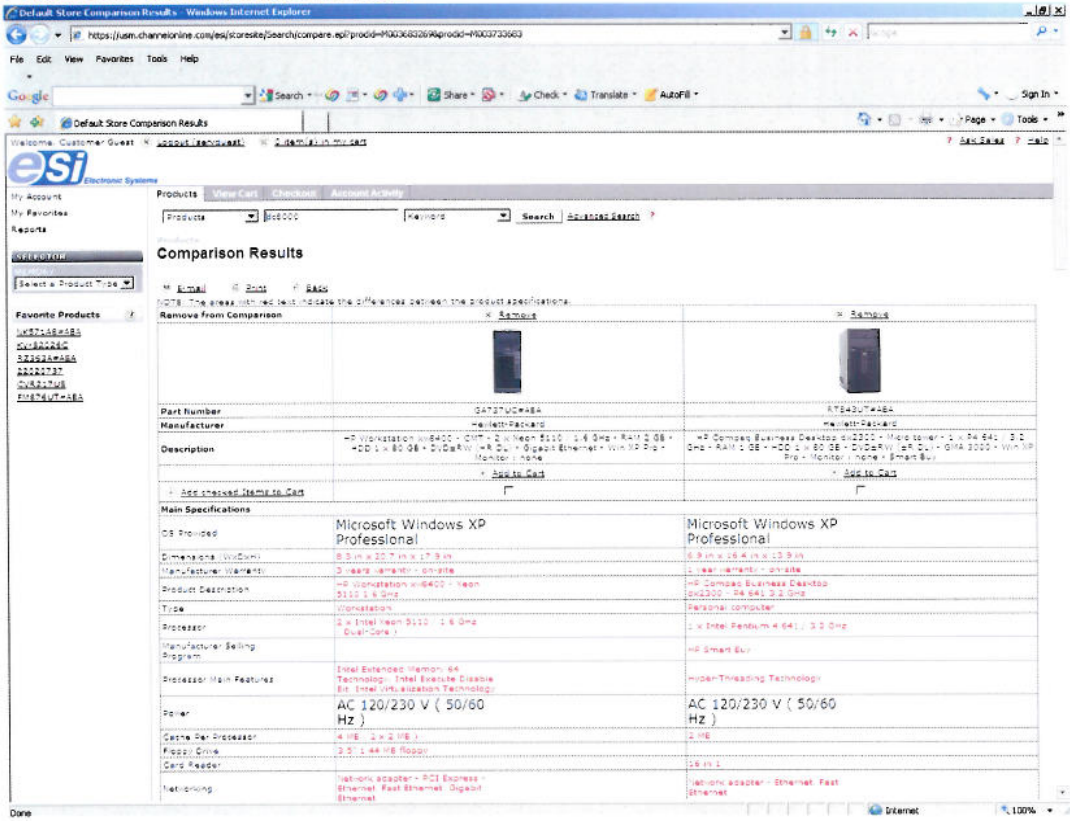
PRODUCT SEARCH PAGE



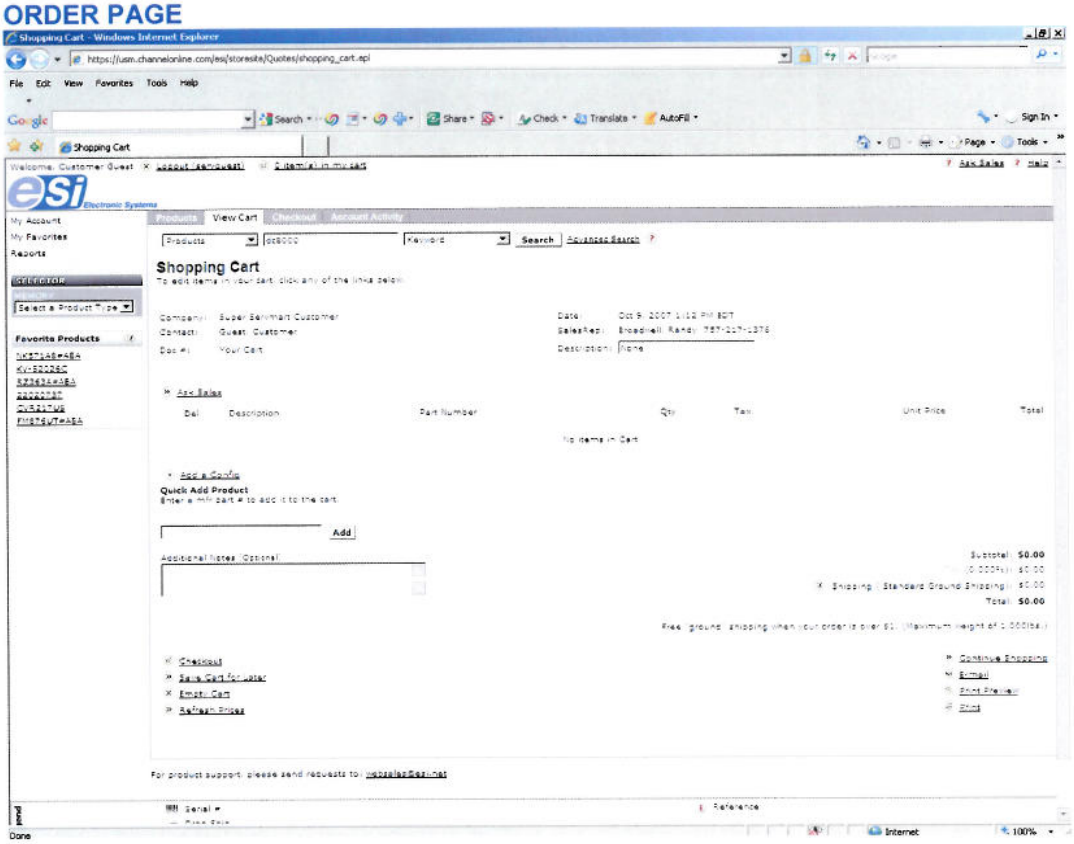
PRODUCT SPECIFICATION, PRICE & STOCK PAGE



PRODUCT COMPARISON PAGE



ORDER PAGE



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?	**N**	**Not at this time. However, if this is a necessary requirement of the Commonwealth, ESI will explores ways that it can accommodate this request.**
8	Will your proposed solution have a catalog website up, functioning and interfacing with eVA within 30 days of contract award?	**Y**	**ESI will have an initial website interfacing with eVA within 30 days. The website will continue to update and expand after that point.**
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**	**ESI will be able to provide "loaner" or "demo" equipment to end users at no cost in order to make a proper evaluation of the equipment.**

10	Will your proposed solution provide product incentives, credits and or rebate programs? Please provide details.	Y	**Manufacturers offer promotions for certain products at various times. The promotions can be utilized by the Commonwealth of Virginia but usually cannot be combined with any other discounts.**
11	Will your proposed solution offer volume - tiered discounts on products? Please provide details.	Y	**Although the pricing provided for this contract assumes no minimum of maximum quantities, ESI would be willing to work special volume pricing on specific requests.**
12	Will your proposed solution provide additional discounts on equipment and services? Please provide details.	Y	**Although the pricing provided for this contract assumes no minimum of maximum quantities, ESI would be willing to work special discounted pricing on specific requests.**
13	Will your firm provide any additional related services that would be an added value to the Commonwealth? Please describe and provide examples.	Y	**ESI has 200 service personnel in Virginia that provide various services in support of this contract. ESI has provided these services within our response. Such examples are;** **Managed services to remotely monitor customer networks.** **Network assessment services.** **Warranty and post warranty service and support.** **Help desk support.**

B. Marketing

	Requirements	A	B
1	Will your firm provide a dedicated account manager for the duration of any contract? Please provide details.	Y	**ESI will have a dedicated account management team led by John Hagerty who has covered the Commonwealth of Virginia for the past 15 years. His team will include 10 dedicated outside sales reps along with their respective support staff. This coverage model of 10 public sector outside sales reps is unmatched by any other reseller or manufacturer**

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	**ESI has a dedicated Marketing Department located in its corporate headquarters in Virginia Beach, Va. It consists of dedicated marketing specialists supporting ESI and its numerous sales divisions. The support consists of, but not limited to, Newsletters, Corporate Events (shows, fundraisers, and benefits), Sales Programs, Sales Incentive Programs, Proposal Development, and Vendor Relations. This Department supports the Marketing efforts for all ESI locations throughout the Commonwealth and Washington DC area.** **ESI also has a dedicated Public Sector Sales Division. This Division consists of 30+ sales and support personnel that market and promote ESI's contracts and solutions to schools, universities, and local and state agencies. These individuals will be tasked to market this contract along with the support of the marketing department. ESI will also incorporate marketing tools such as shows, regional and local consortium meetings, mailings, phone and email campaigns, and direct marketing agendas to promote this contract**
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	**ESI has and will continue to participate in most expo's and events setup up by the Commonwealth. ESI has been actively involved in events such as COVITS, ACCS, VCCS, Chambers and most locally sponsored shows.**

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	**A key ESI benefit is our breath of coverage across the Commonwealth. This includes 10 dedicated sales representatives that will consistently be engaged with its customers to keep users up to date with products, technology changes and etc.** **Working with each ESI sales rep is a team of technical support individuals that will allow a "deeper dive" into the technology if needed.** **In addition, ESI is a constant exhibitor at most technology shows and events. This will allow continued support of the accounts and provide an avenue to promote the network contract.**
5	Will your firm provide, upon request by an authorized user, product brochures/literature at no cost?	Y	**Brochures and literature will be made available at no cost.**
6	Will your firm provide any additional marketing services that would be an added value to the Commonwealth? Please describe and provide details.	Y	**In additional to the marketing events mentioned above, ESI is open to working with VITA and all public sector accounts to create customized marketing events that could further promote this contract. These events would be at no cost to 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	**Reports are customizable based on invoice date, PO and other query fields.**
2	Will your proposed solution provide reports detailing where the equipment has been installed? Please provide examples.	Y	**Reports are customizable based on invoice date, PO and other query fields.**
3	Will your proposed solution provide trouble log reports? Please provide examples.	Y	**Service history reports can be generated on demand based on serial number.**

4	Will your proposed solution offer any additional inventory management reports that would be an added value to the Commonwealth? Please provide details.	Y	**ESI will work with the Commonwealth to create detailed inventory management reports based on the Commonwealth's needs.**
5	Will your proposed solution provide additional reports that would be an added value to the Commonwealth? Please provide details.	Y	**ESI will provide a Point of Sale (POS) report on a regular basis. This will verify price consistency and monitor contract activity.**

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.	Y	**ESI has 10 outside sales representatives 5 inside representatives and 5 order entry personnel all focused on Virginia public sector that will have the ability to respond to orders within 1 hour.**
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	**ESI will ship in-stock items within 24 hours if stock items are within any one of its warehouses. ESI warehouses are located in Virginia Beach, Richmond, Roanoke, Hampton and Manassas.**
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	**Order tracking is provided on request or could be sent the following day based on need. We will also consider granting rights to select VITA individuals based on contract requirements.**
4	Will your proposed solution include restocking fees for returned standard off-the-shelf products? If so, please list.	Y	**ESI Product Return Policy** **ESI must be notified immediately regarding any product that arrives damaged during shipping or that is DOA (Dead on Arrival) upon first use so that we can expedite replacement.**

			Return of products that are not damaged or defective must be made within 30 days from the date of invoice. Product(s) must be unopened and the box(s) must be free from markings or writing. The return will be subject to a 10% restocking fee plus shipping charges to get it back to the manufacturer or vendor. **Open product is dealt with on a case by case basis. No guarantee is made that open product can be returned.** **If you experience problems with your product during the normal warranty period, please contact the manufacturer or your ESI Sales Representative for warranty procedures and assistance.** **A Return Material Authorization (RMA) number and applicable return instructions are required before returning any product**

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**	**All repairs done under warranty will be repaired at no additional cost as per warranty terms and conditions.**
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**	**All hardware and software replacements will be replaced with equal to or better than hardware or software products.**
3	Will your replacement hardware/system software/parts assume the warranty coverage terms of the replaced hardware and system software?	**Y**	**Replacement of hardware and software under warranty will be replaced with equal to or better than products that will carry the same warranty as that which was replaced.**
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**	**All warranties will be in effect for the term of the warranty, with or without the use of the contact.**

5	Will your firm use service technicians who have and maintain current industry-required certifications? Please provide details.	Y	**ESI service technicians have and maintain industry certifications such as A+, N+, MS certifications - all levels and specific manufacturer certification to perform factory authorized services. Certifications by technician will be provided upon award due to the confidentiality of our staff.**
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.	Y	**ESI would be willing to offer loaner equipment as a possible solution to getting the customers up and running. The initial focus will be on getting the system up and running as per the terms and conditions of the maintenance agreement.**

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: John Hagerty

Printed Name: **John Hagerty**

Organization: **Electronic Systems, Inc.**

Date: **2/11/11**