



Commonwealth of Virginia
Virginia Information Technologies Agency

STATEWIDE HARDWARE AND MAINTENANCE CONTRACTS

Date: February 17, 2016

Contract #: VA-140331-IBM

Authorized User: Authorized User (AU): All public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 of the *Code of Virginia*. Authorized Users also include private institutions of higher education chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code. A list of the private institutions eligible to use this contract can be found at: <http://www.cicv.org/Our-Colleges/Profiles.aspx>.

Contractor: Lenova (United States) Inc.
1009 Think Place
Morrisville, NC 27560

FIN: 52-2449153

Contact Person: Tom Sheeran, Server Field Acct Rep
Phone: (202) 406-0515
Email: tsheeran@lenovo.com

Brad Davis, Inside Acct Rep
Phone: (919) 804-5683
Email: Bdavis1@lenovo.com

Term: March 31, 2016 – March 30, 2017

Payment: Net 30 days

For Additional Contract Information, Please Contact:

Virginia Information Technologies Agency
Greg Searce
Strategic Sourcing Specialist
Phone: 804-416-6166
E-Mail: gregory.searce@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.



COMMONWEALTH of VIRGINIA

Virginia Information Technologies Agency

Nelson P. Moe
Chief Information Officer
Email: cio@vita.virginia.gov

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

TDD VOICE -TEL. NO.
711

February 17, 2016

Ryan Rand
Lenovo (United States) Inc
1009 Think Place
Morrisville North Carolina 27560

Mr. Rand,

Per Section 3.A. ("Term and Termination") of contract VA-140331-IBM, The Virginia Information Technologies Agency has elected to exercise its option to renew the contract for one year, from March 31, 2016 through March 30, 2017. Should you have any questions, please feel free to contact me.

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

NOVATION AGREEMENT—CONTRACT # VA-140331-IBM

This is an agreement to modify Contract # VA-140331-IBM (the "Contract") between the Commonwealth of Virginia ("Commonwealth") and International Business Machines Corporation, a corporation located at 9201 Arboretum Parkway Richmond VA 23236 (the "Assignor"). The parties to this agreement are the Commonwealth, the Assignor, and Lenovo (United States) Inc., a corporation located at 1009 Think Place Morrisville NC 27560 (the "Assignee"). This agreement is effective as of the ___ day of November, 2014 (the "Effective Date"), and is incorporated into and becomes a part of the Contract.

1. **Assignment.** Assignor hereby assigns to Assignee, and Assignee hereby accepts and assumes, all of Assignor's rights and obligations under the Contract, as of the Effective Date. Without limiting the foregoing, this assignment includes all ongoing maintenance obligations and any known or unknown claims of any party that now exist or which may later arise in connection with Assignor's past performance or Assignee's future performance of the Contract. The Commonwealth hereby consents to the assignment.

2. **Customers other than State Agencies.** Notwithstanding the foregoing paragraph, the Commonwealth has no authority to release any existing rights of political subdivisions, other public bodies and 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/profile.aspx> that are not State agencies; therefore, this agreement does not release Assignor from its existing obligations to such entities, but Assignee agrees to fulfill all of Assignor's responsibilities under the Contract to such entities.

3. **Arrangements as between Assignor and Assignee.** Any arrangements which Assignor and Assignee may make or which they may have already made in regard to rights as between themselves are separate from this Novation Agreement and shall not affect the Commonwealth's right hereunder to treat the Assignee as holding all rights and obligations of Assignor, or the right of political subdivisions or other public bodies that are not State agencies to look to Assignee to fulfill Assignor's responsibilities under the Contract (or to look to Assignor directly, as indicated in the foregoing paragraph).

4. **Misdirected Communications or Payments.** Assignor and Assignee represent and warrant to the Commonwealth and to any political subdivisions, other public bodies and 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/profile.aspx> using the Contract that any communications from the Commonwealth or from political subdivisions or other public bodies in connection with the Contract can be made to Assignee at the office address shown herein for Assignee. Assignor and Assignee represent and warrant that they have made or shall make arrangements to insure that any orders, payments or other communications from the

Commonwealth, its political subdivisions or other public bodies in regard to this Contract are promptly returned to the sender or forwarded to Assignee in the event they are addressed or sent to Assignor. Any such payment or communication which is not promptly returned to the sender shall be deemed to have been made to Assignee.

5. Release of Assignor. Except for the responsibilities of Assignor described in this Novation Agreement, the Commonwealth releases Assignor from any further obligation to the Commonwealth under the Contract, as of the Effective Date, and the Commonwealth agrees that it shall look only to the Assignee for further performance under the Contract or in regard to any Commonwealth claims under the Contract. In accordance with the Contract, this Novation Agreement shall be governed by the laws of Virginia and any litigation with respect thereto shall be brought only in the courts of the Commonwealth of Virginia. All other terms and conditions of the Contract remain in full force.

6. Complete Agreement. This is the complete and final expression of the Assignor's and Assignee's agreement with the Commonwealth and can be modified only in a writing signed by all parties. Assignor agrees, however, that the Commonwealth and Assignee may wish to modify the underlying Contract in the future, and that neither Assignor's consent nor signature shall be required for any such modification.

The undersigned representatives of each party represent and warrant that they are each duly authorized to sign this agreement on behalf of their principals identified below, and do hereby sign on behalf of same.

ASSIGNOR


Signature:

Russell Boles

Name:

Public Sector Contracts Sales Mgr.

Title:

November 11, 2014

Date:

ASSIGNEE


Signature:

Melissa Maloney

Name:

Director, Inside Sales

Title:

November 10, 2014

Date:

COMMONWEALTH OF VIRGINIA


Signature:

GREGORY H. SCEARCE

Name:

STRATEGIC SOURCES SPECIALIST

Title:

11-13-14

Date:

**MODIFICATION NO. 1
TO
CONTRACT NUMBER VA-140331-IBM
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
IBM CORPORATION**

This MODIFICATION No. 1 is hereby incorporated into and made an integral part of Contract VA-140331-IBM.

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 also include private institutions of higher education chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code. A list of the private institutions eligible to use this contract can be found at <http://www.cicv.org/our-Colleges/Profiles.aspX>
2. Add to the definition of "Indemnification" in Section 15 Subsection A on Contract Pages 19-20.
"In the event of settlement between Supplier and private institution of higher education who is an Authorized User of this contract, the settlement shall be satisfactory to such institution."
3. Add to the definition of "Dispute Resolution" in Section 18 Subsection E on Contract Page 23.
"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-140331-IBM by this Modification No. 1.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

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

NAME OF SUPPLIER

BY: IBM _____

NAME: Theresa E. Bode

TITLE: Public Sector Contracts Sales Mgr

DATE: 8/6/14

COMMONWEALTH OF VIRGINIA

BY: Day Crenshaw

NAME: Day Crenshaw

TITLE: Act. Sec'y Mkt

DATE: 8/11/14



Hardware and Maintenance Contract

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

INTERNATIONAL BUSINESS MACHINES (IBM)

**HARDWARE AND MAINTENANCE CONTRACT
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HARDWARE AND MAINTENANCE CONTRACT

THIS HARDWARE AND MAINTENANCE CONTRACT ("Contract") is entered into by and between the Virginia Information Technologies Agency (hereinafter referred to as "VITA"), pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia, and International Business Machines ("Supplier"), a corporation headquartered at 9201 Arboretum Parkway Richmond VA 23236, to be effective as of March 31, 2014 ("Effective Date").

1. PURPOSE

This Contract sets forth the terms and conditions under which Supplier agrees to provide purchase of personal computer devices, servers, peripherals and related accessories/supplies, Services and Maintenance to Authorized Users of this Contract.

2. DEFINITIONS

A. Acceptance

Acceptance shall take the form of successful delivery to the designated ship to location (Receipt), as specified in the applicable order.

Supplier provides warranty services in accordance with the "IBM Customer Agreement for Products", contained in Exhibit D. Supplier does not provide acceptance testing but does warrant that the Machine conforms to its specifications.

Maintenance Services will be delivered under the terms and conditions of the attached "Master Services Attachment for ServiceElite (the 'MSA') in Exhibit D.

B. Agent

Any third party independent agent of any Authorized User.

C. Authorized Users

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

D. Confidential Information

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

E. Maintenance Level

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

F. Maintenance Coverage Period (MCP)

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

G. Maintenance Services (or Maintenance)

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

H. Operating Condition

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

I. Party

Supplier, VITA, or any Authorized User.

J. Product

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

K. Receipt (of Product)

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

L. Requirements

The functional, performance, operational, compatibility and other parameters and characteristics of the Product as set forth in the applicable documentation, Exhibit D and such other parameters, characteristics, or performance standards for the Product that may be agreed upon in writing by the Parties.

(NOTE: In case of conflict, see Entire Contract clause for order of precedence.)

M. Response Time

The time between the Supplier’s determination that on-site service is required after receipt of Authorized User’s request for Maintenance and the time Supplier arrives on-site to commence repair of the Product.

N. Service

Any Product-related work performed or service provided, including certain Maintenance Services or other services for the Product and provision to the Authorized User of any deliverable, by Supplier under this Contract.

O. Software Publisher

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

P. Supplier

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

Q. System Software

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

Supplier assumes that all System Software is provided by a third party and makes no representations or warranties regarding third party System Software. Supplier does provide Machine Code, specific to each Machine. (Definition below)

Machine Code – all of the following: (i) all code provided for an IBM Machine (including, without limitation, a Machine’s firmware and microcode), excluding code that is licensed under a license agreement other than the license agreement governing use of Machine Code (for example, IBM operating system and middleware products); and (ii) records, data, and structures created, used or relied on by the code in item (i) (for example, IBM System z Machine LIC configuration control records and passwords that help restrict access or use of the code in item (i)). The term Machine Code specifically includes any whole or partial copy of Machine Code, and any fix, patch, or replacement provided for Machine Code.

3. TERM AND TERMINATION

A. Contract Term

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, shall continue to be effective and legally binding for a period of two (2) years. VITA, at its sole discretion, may extend this Contract for up to three (3) additional one (1) year periods after the expiration of the initial two (2) year period. VITA will issue a written

notification to the Supplier stating the extension period, not less than thirty (30) days prior to the expiration of any current term. Warranty or Maintenance Services for any Product ordered during the term of the Contract may be renewed per Section 8 of the MSA attached to Exhibit D. 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 Warranty or Maintenance Services pursuant to such order or SOW have met the final Acceptance criteria or the term of the order has been reached for 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.

Termination for Maintenance Services are pursuant to Section 8 of the MSA attached in Exhibit D.

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 thirty (30) 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 thirty (30) 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 in connection with this contract, 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.

Termination for Maintenance Services for non-appropriation of funds are in Section 8 of the MSA attached in Exhibit D

E. Effect of Termination

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

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

Supplier shall refund a prorated return of monies from the point of the termination for Maintenance and will negotiate a return of monies for the Products based on the circumstances.

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.

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 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 as applicable to this contract and shall complete, sign and return to VITA Supply Chain Management within 30 days of receipt. This documentation as applicable 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. 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.

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 will make commercially reasonable efforts to deliver Products when requested. Some situations and circumstances may be beyond the control of the Supplier

C. Product Trade-in and Upgrade

IBM's Global Assist Recovery Services can assist VITA with trading-in their old equipment (with value) into cash which they can apply to a new / upgraded IBM purchase. Equipment with value will be purchased by IBM Global Financing (IGF) based on the monthly pricing grid (based on current market value for type and technology of equipment) for the month equipment is received by IGF. This process, referred to as IGF's Fixed Price Take Out solution, provides customers with the ability to calculate the value that will be realized for each asset returned. Payment is guaranteed regardless of actual resale which mitigates our customer's risk. IGF holds the risk of selling the equipment in a timely manner. The asset verification process and processing of payment to the customer is performed within forty-five (45) days of receipt. Guaranteed buyback leverages GARS extensive experience and bandwidth in remarketing used equipment. Equipment not listed on the monthly grid will be evaluated on an individual basis for value determination.

Follow the steps below for trading-in products with value:

Step 1. Collect Client Trade in products that are available for immediate pickup

Format should be as follows:

Quantity	Manufacturer	Model / Part Number	Configuration
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Step 2. Submit list to IGF GARS

GARS Contact: Kathy Ferguson - kferguso@us.ibm.com - 203-423-9019

Step 3. Receive price quote within 48 hours after submission of #1

Step 4. Prepare equipment for pickup

Step 5. Payment should be received within 30 days after equipment is tested. Payment may be sent directly to IBM or End-User client

****Minimum quantities may apply depending on the hardware****

For equipment without value please see our response pertaining to IT equipment and recycling services.

D. Product Installation

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.

These systems are customer install units. If Installation is requested then a fee will be required. Customer agrees to provide an environment meeting the requirements for the Machine as specified in its published documentation.

Customer is responsible for installing a Customer-set-up Machine and a non-IBM Machine according to instructions shipped with the Machine provided by IBM or the Machine's manufacturer.

Upon request, installation can be provided by IBM through our Lab Services group. Additional pricing may be associated.

E. Product Acceptance

For Return Policy, please see IBM Customer Agreement for Products in Exhibit D.

F. Cure Period

Refer to Supplier's IBM Customer Agreement for Products in Exhibit D.

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 make reasonable commercial efforts 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

a commercially reasonable efforts to offer or supply advance written notice of its intent to discontinue any Product type previously ordered by such Authorized User.

IBM products are announced at End of Service a minimum of 90 days in advance. Once a product reaches End of Service IBM may support the products on a reasonable effort basis via Time and Materials or Special Bid only due to the potential lack of service parts and skill.

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 on a negotiated hourly billable rate all the necessary user and installation documentation and Warranty repair information reasonably required to enable any Authorized User to provide Warranty support and repair the Product itself. In addition, Supplier agrees to provide, for a period based on Supplier's spare parts inventory and policy from the date of the last purchase, spare parts and components at the current over the counter price, 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.

Please refer to the Self maintain program (<https://www-304.ibm.com/services/weblectures/dlv/Gate.wss?handler=Offering&action=index&customer=bpws&offering=wssx>), as described in Exhibit G.

2. Timeliness and Price

Supplier agrees to make the above-referenced documentation and provide either self-maintainer or training as found in Section C below.

B. Engineering Changes and Product Modification

IBM sells Machine Upgrades for installation on Machines, and, in certain instances, only for installation on a designated, serial-numbered Machine. Within 30 calendar days of the shipment of a Machine Upgrade or as mutually agreed, Customer agrees to install the Machine Upgrade or, if IBM is responsible for the installation, to allow IBM to install the Machine Upgrade. Certain Machine Upgrade orders may be terminated at IBM's discretion if not made available for IBM to install within 30 calendar days of shipment, in which case Customer must return the Machine Upgrade to IBM at Customer's expense. In all cases, if the Machine Upgrade is not made available for IBM to install within six months from the date IBM ships the Machine Upgrade, installation will be subject to an installation charge.

Customer agrees to allow IBM to install mandatory Engineering Changes (such as those required for safety) on a Machine within 30 calendar days of IBM's notice to Customer unless otherwise agreed to by the parties.

Many Machine Upgrades and Engineering Changes require the removal of parts and the transfer of ownership and possession of the removed parts to IBM. Customer is responsible for the return of all removed parts to IBM upon installation of the Machine Upgrade or Engineering Change. As applicable, Customer represents that Customer has permission from the owner and any lien holders to i) install Machine Upgrades and Engineering Changes and ii) transfer ownership and possession of removed parts to IBM. Customer further represents that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part will assume the warranty or maintenance Service status of the replaced part.

Access to Machine Code updates for Power Systems, System x, and System Storage normally requires the applicable machine to be under warranty or an IBM hardware maintenance service agreement.

If the customer's hardware is no longer under warranty and the customer determines that an IBM hardware maintenance service agreement does not meet its needs, IBM will offer a custom service that includes Machine Code updates on a special bid basis. This option is available to the rightful possessor of an IBM machine (the licensee of the Machine Code for such machine). The customer's

request for a special bid needs to include the type, model, serial number and configuration of the applicable machine(s). Based on this information, IBM will consult with the customer and respond with a proposal, or if we need more information, further questions. In all cases, our goal is to fully understand the individual customer's particular requirements and provide a proposal designed to address those requirements.

C. Training

On occasion, IBM will provide onsite skills transfer services at no cost.

Additional training may be available through IBM Lab Services or through Remote Technical Support. Please reference the Customer Support Plan for additional offerings and details.

D. Parts and Maintenance Support

Refer to the MSA in Exhibit D

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 and such Inventory Record shall be a base line, "non-customized" report. IBM will provide customized inventory reports for an additional charge

F. Product Service Record

Supplier shall maintain, at an additional charge, a Product Service Record for each unit of Product covered under IBM provided warranty or maintenance. The content and delivery frequency schedule of the Product Service Record shall be mutually agreed to

G. Additional Services

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

Furthermore, Supplier shall, upon request of an Authorized User by means of an order issued in accordance with the ordering provisions of this Contract, provide the following services beyond those identified as warranty or maintenance service offerings: (i) service on equipment not covered by this Contract, (ii) repair of damage or replacement of parts of hardware resulting from changes in the hardware environment, extraordinary use of the hardware, or interconnected devices, or (iii) service outside the applicable hours of service specified in an executed order referencing this Contract. The charge for such services shall be at the then current Per Call hourly rate for such services. Per Call service is a minimum of 2 hours labor charge plus cost for local mileage, tolls, parking, labor for repair of the product beyond two hours and required parts.

Warranty or maintenance services requested for a unit of hardware within the forty-eight (48) hour period immediately following Remedial Maintenance performed on the same unit of hardware for the same problem, shall not be considered an additional service and shall be provided at no charge.

6. WARRANTY AND REMEDY

A. Supplier

Supplier shall perform its obligations hereunder in accordance with the accepted industry standards as reflected by and in accordance with the IBM Customer Agreement for Products contained in Exhibit D.

B. Ownership

Supplier is the owner of the Product or otherwise has the right to grant to the Commonwealth or any Authorized User title to or the right to use the Product provided hereunder without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third-party. The Commonwealth or an Authorized User's remedy for any breach of the foregoing is set forth in the Section of this Contract entitled "Indemnification and Liability".

C. Supplier Viability

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

D. Compatibility

Supplier warrants that each Product provided hereunder is, and shall continue to be, data, program, and upward compatible with any other Product available or to be available from Supplier within the same family of Products so that data files created for each Product can be utilized without adaptation of the other Products, and so that programs written for the Product shall operate on the next generation of Products, and not result in the need for alteration, emulation, or other loss of efficiency for a period of not less than five (5) years.

IBM's System x commitment is centered around the life cycle and availability of products from our ecosystem partners, such as Intel x86 processors, Microsoft/Linux operating systems and hypervisors. VITA may have change requirement(s) in compilers and/or gold images for future products

E. Product

Supplier warrants the following with respect to the Product:

Supplier warrants the following with respect to the Product:

See attached IBM Customer Agreement for Products contained in Exhibit D.

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.

Supplier assumes that System Software is third party software and cannot make representations or warranties on third party System Software

F. Performance Standards and Mean Time Between Failure

G. Warranty Services

During the warranty periods described in Exhibit C or as specified in the applicable order, Supplier warrants that the Product shall meet the Requirements. Supplier shall provide warranty services (including unlimited telephonic support and all necessary travel and labor) during the Warranty Period at the prices identified in Exhibit C. Supplier shall correct, at no additional cost to any Authorized

User, all errors identified during the warranty period that result in a failure of the Product to meet the Requirements.

The IBM Customer Agreement for Products in Exhibit D provides detailed descriptions of the Supplier's warranty and responsibilities as well as remedies available to the Authorized User in the event Supplier fails to perform its warranty. Exhibit D defines coverage periods and response 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 and responsibilities are based on individual IBM Product specifications.

3. Remedial Maintenance

Supplier's Remedial Maintenance offerings and responsibilities are described in Exhibit D.

4. Replacement Parts

Supplier's offerings and responsibilities related to Replacement Parts, are described in Exhibit D.

5. Spares

IBM does not provide "Spares" but does not maintain parts to repair failing machines.

6. Notification and Correction of Defects

See Exhibit D.

7. On-site Warranty

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

8. System Software Warranty

Not Applicable

9. Escalation Procedures

Please refer to the Customer Support Plan in Exhibit D.

10. Remedies

In addition to any remedies described in Exhibit D "IBM Customer Agreement for Products", if Supplier is unable to make the Product, including System Software, conform, in all material respects to the Requirements, within thirty (30) days following notification by an Authorized User, Supplier shall, at such Authorized User's request, either (i) replace the non-conforming Product or (ii) accept return of the non-conforming Product and return all monies paid by such Authorized User for the returned Product.

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

Notwithstanding the above, IBM Product(s) may be returned for any reason within 30 days of the date of invoice and Customer may obtain a refund or credit. IBM does not provide refunds or credits for portions of a packaged offering provided at a single price. Customer must return

the complete package for a refund or credit. To qualify for this credit or refund, Customer must call Customer's IBM customer support representative to obtain a return-authorization form. Customer must return the IBM Product, including all documentation and accessories, intact and in its original packaging, to an IBM designated location by the date IBM specifies. A copy of the invoice, the return-authorization form, and the shipping label must accompany the return. Shipping and handling charges generally will not be refunded or credited. IBM Products authorized by IBM for return and returned without an IBM return-authorization form, or returned after the date specified by IBM in the return-authorization form, may be subject to a restocking fee equal to 15% of the price paid. Customer agrees to pay the restocking fee as IBM specifies.

This Returns policy does not apply to IBM Product(s) that Customer acquires for which IBM creates a unique machine type model (MTM) not generally available for purchase by all IBM customers.

If a Product ships as a result of an IBM error, IBM will initiate a return of the Product with appropriate documentation at no charge to Customer if IBM is notified of the error within 30 days of the date of the invoice.

11. Product Maintenance Services and Renewal Options

You may enable automatic inventory insert on your IBM Schedule for Services, per the terms of your MSA. Through Auto Inventory Insert equipment covered under warranty will automatically be covered under maintenance at warranty expiration. If Auto Insert is not enabled, you will be responsible for notifying IBM of your choice of coverage.

The maintenance price will be based on the current list price less the discount percentage identified in Exhibit C. Supplier warrants that it shall make Maintenance Services available for all the IBM Products, listed in Exhibit C, or which are components of Products listed in Exhibit C, for a period of at least 1 year 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, 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. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION ENTITLED WARRANTY SUPPLIER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY OTHER PARTICULAR PURPOSE.

7. MAINTENANCE SERVICES

Supplier shall provide Maintenance Services (including unlimited telephonic support and all necessary travel and labor) during the Maintenance Coverage Period (MCP) at the then current List Price less the discounts 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 defining coverage periods, and response times objectives.

Authorized User's designated control organization shall have the exclusive authority to request maintenance services. Authorized user's designated control organization is responsible to have only have authorized persons place the service call to the supplier

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, subject to prior certification by Supplier. Each order shall identify:

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

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

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

Supplier's Maintenance Services renewal terms can be found in Section 8.0 of the MSA attached to Exhibit D.

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 productive use, provided Supplier has been notified in writing of such removal.

2. Preventive Maintenance

Supplier's Preventive Maintenance responsibilities are based on individual IBM Product specifications,

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

IBM does not provide "Spares" but does maintain parts to repair failing machines.

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

Advance Replacement Services are not available on the IBM Products in Exhibit C.

8. On-site Maintenance Services

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

9. System Software Maintenance

Supplier assumes that System Software is third party software and cannot make representations or warranties on third party Software. IBM's software provided by and owned by IBM shall be licensed in accordance with IBM's International Program License Agreement included in Exhibit E.

10. Escalation Procedures

Please refer to the Customer Support Plan in Appendix 1.

11. Remedies

IBM's maintenance solution does not include remedies.

8. SCOPE OF USE

Any Authorized User may use the Product, and any software licensed in connection with such Product, 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 or Commonwealth Public bodies but only for the express purposes of conducting services or business for VITA or Authorized Users. Supplier assumes that System Software is third party software and cannot make representations or warranties on third party System Software.

9. SOFTWARE LICENSE

All contents of section 9 are not applicable.

10. ORDERS AND COMPENSATION

A. Supplier Quote and Request for Quote

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

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

Generally, the Authorized User will select the supplier offering the lowest total cost proposal. However, non-price factors may be included in the evaluation criteria for a given RFQ. Any purchase from Supplier that is a result of the RFQ process shall be subject to the terms and conditions specified and outlined in this Contract and any subsequent modifications. Additional terms and conditions may be requested or mandated within the RFQ document. To the extent 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 (<http://www.eva.virginia.gov>). eVA is the Commonwealth of Virginia's e-procurement system. State agencies, as defined in §2.2-2006 of the Code of Virginia, shall order through eVA. All other Authorized Users are encouraged to order through eVA, but may order through the following means:

- i). Purchase Order (PO): An official PO form issued by an Authorized User. PO must reference the IBM Schedule of Services number
- ii). Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA under contract for use by an Authorized User, For orders placed for services under the MSA in Exhibit D, IBM accepts credit card payments for maintenance billing up to the amount of \$99,999.99.

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.

IBM reserves the right to utilize IBM fee offerings in which authorized business partners act as agents of IBM. In all cases, the purchase orders are issued direct to IBM and are fulfilled and invoiced by IBM under the terms and conditions of this contract.

Notwithstanding the foregoing, an Authorized User shall not place an order to Supplier if such order is to be funded, in whole or in part, by federal funds.

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.

All Purchase Orders must reference the VITA contract number on the Purchase Order.

IBM reserves the right to utilize IBM fee offerings in which authorized business partners act as agents of IBM. In all cases, the purchase orders are issued direct to IBM and are fulfilled and invoiced by IBM under the terms and conditions of this contract.

C. Purchase Price and Price Protection

Exhibit C sets forth the prices by Product type (including whole units and repairable major components thereof) and the appropriate Commonwealth discounts. The discounts shall not decrease for a period of not less than two (2) years from the Effective Date of this Contract. Thereafter, any increase in price shall be limited to once per twelve (12) month period and shall not exceed the lesser of three percent (3%) or the annual increase in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, for the expenditure category "Information technology, hardware and services" as published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/cpi/home.htm>), for the effective date of the increase compared with the same index one (1) year prior. Supplier shall demonstrate the added value for any requested price increase. Any change in price shall be submitted in writing in accordance with the above and shall not become effective for sixty (60) days thereafter. Semi-annually, VITA may check the prices for Product against the CPI-U, as defined above, for the expenditure category "Information technology, hardware and services", and the prices in Exhibit C shall be appropriately reduced to ensure continued price competitiveness, if required.

IBM offers multiple price protection options for Maintenance as described in Section 7 of the MSA attached to Exhibit D.

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.

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 have been accepted. Payment for Maintenance Services shall be invoiced per the option selected by an Authorized User as described in the MSA attached to Exhibit D. No invoice shall include any costs other than those identified in the executed order, which costs shall be in accordance with Exhibit C. Without limiting the foregoing, all shipping costs are the Supplier's responsibility except to the extent such charges are identified in Exhibit C, or as noted in any executed order referencing this Contract. Invoices issued by the Supplier shall identify at a minimum:

- i). Product or Service type and description
- ii). Product serial number, if any
- iii). Quantity, charge and extended pricing for each Product and/or Service item
- iv). Applicable order date (not included on maintenance invoices)
- v). Ship date (not included on maintenance invoices)
- vi). Ship-to location contact name (not included on maintenance invoices)
- vii). This Contract number and the applicable order number (order number will not be on maintenance invoices).

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. 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 Product invoice shall have no force or effect and will in no way bind VITA or any Authorized User.

F. Purchase Payment Terms

Supplier is responsible for the accuracy of its billing information. Supplier agrees not to issue invoices hereunder until Product has been shipped.

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

11. REPORTING

Supplier is required to submit to VITA the following monthly reports:

- Report of Sales; and
- Small Business Subcontracting Report

These reports must be submitted using the instructions found at the following URL:

<http://www.vita.virginia.gov/scm/default.aspx?id=97>

Failure to comply with all reporting requirements may result in default of the Contract.

Suppliers are encouraged to review the site periodically for updates on Supplier reporting.

IBM does not intend to use subcontractors. IBM would like to reserve the right to include subcontractors at a later time. If subcontractors are used at a later time, IBM will comply with the Subcontracting Reporting requirements.

12. STEERING COMMITTEE

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

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

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

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

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

13. COMPETITIVE PRICING

IBM uses commercially reasonable methods to provide competitive pricing based on market conditions.

14. CONFIDENTIALITY

A. Treatment and Protection

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

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

B. Exclusions

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

- i). in the public domain through no fault of the receiving Party or of any other person or entity that is similarly contractually or otherwise obligated;
- ii). obtained independently from a third-party without an obligation of confidentiality to the disclosing Party and without breach of this Contract;
- iii). developed independently by the receiving Party without reference to the Confidential Information of the other Party; or
- iv). required to be disclosed under The Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) or similar laws or pursuant to a court order.
- v). Either Party may use in its business activities the ideas, concepts and know-how contained in the disclosing Party's Confidential Information which are retained in the memories of the receiving Party's personnel that have had access to Confidential Information under this Contract without disclosing that Party's Confidential information.

C. Return or Destruction

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

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

15. INDEMNIFICATION AND LIABILITY

A. Indemnification

Supplier agrees to defend the Commonwealth, VITA, any Authorized User, their officers, directors, agents and employees (collectively, "Commonwealth's Indemnified Parties") against any claim by an unaffiliated third party that any Machine infringes its patent or copyright, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent), to the applicable Commonwealth Indemnified Parties to which such judgment applies. VITA must notify Supplier promptly in writing of the claim and, to the extent permitted by applicable law of the Commonwealth of Virginia, including Virginia Code §§2.2-510 and -514, give Supplier control over its defense or settlement. VITA or the Authorized Users agree to provide us with reasonable assistance in defending the claim, and Supplier will reimburse VITA or the applicable Authorized Users for reasonable out of pocket expenses that VITA and the Authorized Users incur in providing that assistance.

In the event that a Claim is commenced against any of Commonwealth's Indemnified Parties alleging that use of the Machine or any Machine component or that the provision of Services under this Contract infringes any unaffiliated 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 Supplier receives information concerning a copyright or patent infringement claim related to a Machine, Supplier shall at its expense, either (a) procure for all Authorized Users the right to continue use of such allegedly infringing Machine, or any component thereof as permitted by the applicable purchase order; or (b) replace or modify such allegedly infringing Machine, or any component thereof, with non-infringing Machine satisfactory to VITA. And in addition, Supplier shall provide any Authorized User with a comparable temporary replacement Machine or reimburse VITA or any Authorized User for the reasonable costs incurred by VITA or such Authorized User in obtaining an alternative product in the event such Authorized User cannot use the affected Machine. 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 Machine, along with any other components of any products rendered unusable by any Authorized User as a result of the infringing component, and refund the price paid to Supplier for such components.

Claims for Which Supplier is Not Responsible

Supplier has no obligation regarding any claim based on any of the following:

anything provided by VITA or a third party on VITA's behalf that is incorporated into a Machine or Supplier's compliance with any designs, specifications, or instructions provided by VITA or a third party on VITA's behalf;

a Machine's use other than in accordance with its applicable licenses and restrictions or use of a non-current version or release of a Machine, to the extent a claim could have been avoided by using the current release or version;

any modification of a Machine made by VITA or by a third party on VITA's behalf or the combination, operation, or use of a Machine with any other Machine, hardware device, program, data, apparatus, method, or process;

the distribution, operation or use of a Machine outside VITA's Enterprise;

running or executing an ICA Program on other than a Designated Machine; or

a non-Supplier Machine or an Other Supplier Program.

This Intellectual Property Protection section states Supplier's entire obligation and VITA's exclusive remedy regarding any third party intellectual property claims.

VITA agrees that this Contract does not create any right or cause of action for any third party against the Contractor except for third party claims that fit within the indemnification provision of this Contract. VITA further agrees not to initiate a cause of action against the Contractor for the asserted claims by any third party for damages that may result from breach of contract.

B. Liability

There may be situations in which VITA or an Authorized User has a right to claim damages or payment. Except as otherwise specifically provided in this paragraph, whatever the legal basis for such claims, Supplier's total liability (and that of our contractors) will be limited, to the maximum extent permitted by applicable law, to direct damages up to two hundred percent of the value (i.e., greater of amount paid or a "not to exceed" amount specified in the purchase order), in the aggregate, for the Machines giving rise to the claims. In the event the Machines are provided to VITA or an Authorized User on a gratuitous or no-charge basis, Supplier's total liability to VITA or such Authorized User will not exceed US \$50,000 or its equivalent in local currency. The limitations on direct damages under this paragraph will not apply with respect to the following in connection with the performance of this Contract:

Supplier's Section 14 (defense of infringement claims); bodily injury, including death, and damage to real property and tangible personal property to the extent of Supplier's willful misconduct or gross negligence.

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

16. SECURITY COMPLIANCE

Supplier agrees to comply with all provisions of the then-current Commonwealth of Virginia security procedures, published by the Virginia Information Technologies Agency (VITA) and which may be found at (<http://www.vita.virginia.gov/library/default.aspx?id=537#securityPSGs>) or a successor URL(s), as are pertinent to Supplier's operation. Supplier further agrees to comply with all provisions of the relevant Authorized User's then-current security procedures as are pertinent to Supplier's operation and which have been supplied to Supplier by such Authorized User. Supplier shall also comply with all applicable federal, state and local laws and regulations.

IBM will conduct background checks on those United States permanent employees of IBM who provide Services under this Agreement on a full time basis at any of your United States facilities (a "Resident IBM Employee"). Background checks will (a) identify federal and county felony and misdemeanor arrest and convictions, including sentences of deferred adjudication; (b) include a search of a national criminal database, (c) include a search of government sanction registries, such as OFAC and (d) and a Social Security Number Death Master Search. The Resident IBM Employee will be asked for their last seven (7) years of addresses.

If a Resident IBM Employee is removed or reassigned from any of your United States facilities as a result of information obtained from a background screening, IBM will notify you that such Resident IBM Employee has been removed or reassigned. We will both cooperate reasonably on addressing those issues (if any) created by the removal or reassignment or a request to remove or reassign a Resident IBM Employee, including (by way of illustration but not limitation) compliance with applicable law and any impact to IBM's ability to provide the Service as provided in applicable Statements of Work.

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

It is anticipated that that the type of information in this paragraph will not be accessed by Supplier as this is a contract for Hardware and Maintenance support and that the Supplier shall not have access to this type of Information.

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.

Notwithstanding the foregoing, Supplier's entire and collective liability under this Section shall in no event exceed two hundred percent of the value (i.e., greater of amount paid or a "not to exceed" amount) of the applicable statement of work for Services, in the aggregate, for the Services giving rise to the claim under this section.

17. BANKRUPTCY

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

18. GENERAL PROVISIONS

A. Relationship Between VITA and Authorized User and Supplier

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

B. Incorporated Contractual Provisions

The then-current contractual provisions at the following URL are mandatory contractual provisions, required by law or by VITA, and that are hereby incorporated by reference:

<http://www.vita.virginia.gov/uploadedFiles/SCM/StatutorilyMandatedTsandCs.pdf>

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

The then-current terms and conditions in documents posted to the 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.

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:

- i). To VITA and to Supplier, if Supplier is incorporated in the Commonwealth of Virginia, to the addresses shown on the signature page.
- ii). To Supplier, if Supplier is incorporated outside the Commonwealth of Virginia, to the Registered Agent registered with the Virginia State Corporation Commission.

Pursuant to Title 13.1 of the Code of Virginia, VITA or Supplier may change its address for notice purposes by giving the other notice of such change in accordance with this Section.

Administrative contract renewals, modifications or non-claim related notices are excluded from the above requirement. Such written and/or executed contract administration actions may be processed by the assigned VITA and Supplier points of contact for this Contract and may be given in person, via U.S. mail, courier service or electronically.

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:

- viii). Three (3) years from Service performance date;

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

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

P. Offers of Employment

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

Q. Contract Administration

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

R. Entire Contract

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

- Exhibit A Request for Proposal
- Exhibit B RESERVED
- Exhibit C Prices, Fees, Service Charges and Payment Schedule
- Exhibit D Warranty and Maintenance Descriptions, Master Services Attachment for ServiceElite (MSA) and IBM Customer Agreement for Products
- Exhibit E IBM's International Program License Agreement for separate software programs
- Exhibit F Certification Regarding Lobbying
- Exhibit G Statement of Work (SOW) Self-Maintainer Terms
- Exhibit H Awarded Manufacturer/Categories

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

An Authorized User and Supplier may enter into an ordering agreement pursuant to this Contract. To the extent that such ordering agreement, or order issued hereunder, include any terms and conditions inconsistent with the terms and conditions of this Contract, or it's Exhibits in accordance with the order of precedence, 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.

IBM

By: Russell Boles
(Signature)

Name: Russell Boles
(Print)

Title: Public Sector Contracts Sales Mgr.

Date: 3/14/14

Address for Notice:

7100 Highlands Parkway

A04-01

Smyrna, GA 30082

Attention: Russell Boles

VITA

By: Samuel A. Nixon, Jr.
(Signature)

Name: SAMUEL A. NIXON, JR.
(Print)

Title: CHIEF INFORMATION OFFICER

Date: 03-18-2014

Address for Notice:

11751 Meadowville Lane

Chester VA 23836

Attention: Contract Administrator

Appendix E

Suppliers are to indicate their capability of fulfilling each specific requirement below. Each Supplier's responses will be reviewed and compared across Suppliers within each service type in order to determine the best solution for the Commonwealth. Detailed requirements are presented in questionnaire format to facilitate direct responses and establish accountability regarding delivery of Solution by the Supplier. To respond to each requirement, Supplier is asked to enter, in the space provided in Column A, a code that best corresponds to its intended response for the requirement listed. The acceptable codes for Column A are as follows:

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

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

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

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Appendix E		
Requirement	Y/N/F	Description
General		
You have agreed that you can sell/service the entire Commonwealth of Virginia. Please describe how this will be accomplished for this contract.	Y	IBM is prepared to sell to all public bodies in the entire Commonwealth of Virginia via the direct channel. IBM's Virginia team includes a host of experts that are able to handle any needs a user might have. This team includes field representatives that are experts in products and services, an inside team that are able to address any order or support issues, and a technical support experts that are highly trained and available to answer technical questions. This team strategy allows IBM to handle all issues a Virginia user might have directly.
Do your service/sales personal undergo training on a semi-annual or annual basis? If so, please explain.	Y	IBM requires all SSRs to obtain A+ Certification before employment. A+ Certification is recognized across the microcomputer industry as a credible means of demonstrating technical knowledge and customer relationship skills. To obtain A+ Certification, representatives are tested on computer repair, preventative maintenance, safety, diagnosis, configuration, installations and upgrades. Some examples of our certifications: Network – Training and certifications – voice, wireless, routing, switching, security: Cisco (CCNA, CCDA, CCDP, CCNP, CCIE, Novell Master CNE, RCDD, Nortel (NCSS, NCTS), Juniper (JNCIS-SSL, JNCIA-IDP, JNCISFWV, JNCIS-ER, JNCIA-DX, JNCIAWX. Server – MCSE; Unix/AIX trained and certified, Linux trained, some Sun trained Client – MCSE Telecom – Voice, VoIP
Does your proposed solution include the ability to market and promote this contract to schools, universities, local and non-Executive Branch state agencies? If so, please provide details.	Y	IBM has a dedicated public sector sales team. This includes a marketing team focused on web, print and social messaging to provide information and direction for clients interested in IBM solutions ranging from hardware, software, services to turn key offerings. This includes, but not limited to websites specific to this potential contract, blogs for public sector clients, webinars to inform about product updates and the use of social messaging like Twitter and LinkedIn to insure clients are aware of their contract choices. Additional Marketing Tools include: eContact: a tool which is an e-mail application, designed to enable IBM to initiate and nurture relationships with clients. These emails are usually 'newsletter' like in style providing customized information suited to the individual customer. This particular type of outreach is usually done on a monthly basis to provide timely product information and special offers when applicable. My Rep Page: Unique to IBM, individual web pages/sites for IBM representatives covering public sector customers have been established to offer yet another option for our clients to reach out and engage with IBM representatives. These sites are maintained to offer an easy way for our clients to stay up to date on IBM offerings and solutions. These pages also offer the capability to communicate via instant messaging between client and IBMer to provide
Does your proposed solution include a re-stocking fee on returned equipment? Please provide details.	N	Please refer to IBM Customer Agreement for Products on the handling of defective or DOA systems.

<p>Has your company won any awards or recognition in any of the categories that you are proposing a solution to? If so, please describe.</p>	<p>Y</p>	<p>IBM has won several state wide contract awards including nationwide cooperatives for the products and services as described in this bid. IBM holds approximately 35 participating addendums with states and/or with individual public sector entities through the WSCA agreement (Western States Contract Alliance – nationwide cooperative). IBM also currently holds individual IT hardware contract awards which include Intel / AMD servers in approximately 11 additional states.</p>
<p>Does your organization participate in any type of governmental conferences that allows you to promote government contracts that have been awarded to your organization? If so, please explain.</p>	<p>Y</p>	<p>IBM maintains relationships with nationally recognized organizations that support government institutions such as National Leagues of Cities, Public Technology Institute, and National Association of Counties. IBM actively participates in their conferences, webinars and other member events which may present opportunities for IBM to promote state wide contracts.</p>
<p>Does your proposed solution include developing a catalog website that interfaces with eVA and also be a punch-out catalog? If so, please describe and provide screen shots. (http://www.eva.virginia.gov/vendors/pages/catalogcreation.htm)</p>	<p>Y</p>	<p>IBM will maintain a catalog website that is accessible via the internet which will support the web requirements of this RFP. It will offer customers the ability to purchase from a catalog for this contract. In addition, IBM can offer an electronic Punchout Catalog that can be accessed through eVA. Screenshots of catalogs and additional information can be found in attachment.</p>
<p>Does your proposed solution offer a web catalog that displays real time product availability? If so, please explain</p>	<p>N</p>	
<p>Does your solution comply with all current COV ITRM Policies and Standards, as applicable, found at: http://www.vita.virginia.gov/library/default.aspx?id=537</p>	<p>Y</p>	
<p>Do your proposed interfaces to Commonwealth systems comply with or have approved exceptions to all applicable Commonwealth Data Standards as found at http://www.vita.virginia.gov/oversight/default.aspx?id=10344</p>	<p>Y</p>	
<p>Does your proposed equipment meet the current U.S. Environmental Protection Agency's and Department of Energy's Energy Star guidelines? If so, please explain.</p>	<p>Y</p>	<p>IBM is committed to environmental leadership in all of its business activities, from its operations to the design of its products and use of its technology. IBM corporate policy on environmental affairs, first issued in 1971, is supported by the IBM global environmental management system, which is the key element of our efforts to achieve results consistent with environmental leadership and ensures the company is vigilant in protecting the environment across all of its operations worldwide.</p> <p>While this is a voluntary program for servers, IBM's proposal includes servers which follow the Energy Star Guidelines. For additional information on those qualified products please visit : http://www.ibm.com/ibm/environment/products/energystar.shtml</p>

Appendix E		
Requirement	Y/N/F	Description
Reports		
Does your proposed solution offer quarterly reports to Authorized Users detailing products that have been placed in any of their locations? If so, please provide details and examples.	Y	IBM e-tools are state-of-the-art, webbased client support applications that provide access to a host of information including the ability to view near realtime status of contracts, orders, billing, and inventory. Our clients can receive immediate response to questions rather than placing time-consuming phone calls. Our suite of e-tools offers our clients ways to increase their productivity and save costs. IBM has designed a set of e-tools to make it easier than ever for our clients to do business with IBM. IBM Client Support and Administrative e-tools provide the information that you need, when you need it. Best of all, these tools are available at no cost.
Does your proposed solution maintain an electronic service log that is available to Authorized Users? If so, please provide details and examples.	Y	IBM Client Support and Administrative e-tools provide the information that you need, when you need it. IBM has created a web based tool to be used to place and track Electronic Service Requests to IBM Technical Support Services. This tool allows IBM customers the ability to place and self-service break/fix calls through the web. Our customers can also place a Service Request with IBM by dialing 1-800- IBM-SERV.
Does your proposed solution include any additional reports that would be a benefit to Authorized Users? If so, please provide details and examples.	Y	IBM has extensive reporting capabilities and is willing to work with the Commonwealth and/or individual agencies to design customized reporting, in addition to standard contract reporting, that meets individual needs. These needs can be communicated to the Sales team and addressed ad hoc. Additional charges may apply.

Appendix E		
Requirement	Y/N/F	Description
Services & Sales		
Does your proposed solution provide Authorized Users service within 8 business hours of notification or next business day? If so, please explain.	Y	Please see our Service Level Objective descriptions in Exhibit D of this response.
Does your proposed solution provide hardware and software support from 8:00 am - 5:00 pm EST? If so, please provide details.	Y	Please see our Service Level Objective descriptions in Exhibit D of this response. Software support is not included in our response.
If your proposed solution does not include qualified technicians to service devices being proposed, please explain how your company will ensure that those devices are serviced in accordance with the warranties listed in Exhibit C.	N	IBM is the manufacturer and will provide certified service.
Is your firm willing to commit to service level agreements? If so, please refer to Appendix A and fill in the yellow shaded areas.	N	Please see our Service Level Objective descriptions in Exhibit D of this response.
For suppliers responding to the Server Category, does your firm have qualified technicians to perform services such as installation, configurations, data migrations, etc. If so, please explain and for those not responding to the Server Category, please respond with N/A in column B.	Y	IBM does have qualified technicians to perform these services. These services would be contracted for separately and carry an additional charge.
Does your proposed solution include a customer support program? If so, please describe your firm's ability to keep users informed of new products, changes in technology, advanced specification documentation and other market information.	Y	Upon Request- the IBM Field Sales Team will supply and review the customer support plan as well as meet to review its content along with making recommendations and suggestions to assure success.
Does your proposed solution include your firm's ability to deliver large quantities of equipment to multiple locations? Please describe your firm's process and experience including delivery time and scheduling procedures.	Y	IBM offers products through manufacturing or distribution to allow for speedy shipment and delivery to anywhere in the US. We offer ourselves pro-actively to help with planning, roll out schedules, availability reports, and advance order process to assure timelines are met.

<p>Does your proposed solution include IT equipment disposal and recycling services? Please provide details and pricing for these services in Appendix C (Services/Warranty Tab)</p>	<p>IBM Global Finance (IGF) Global Asset Recovery Services (GARS) is uniquely qualified to offer a comprehensive global asset recovery program underneath a single umbrella which addresses the following goals;</p> <ul style="list-style-type: none"> ☑ Obtaining maximum cash value for assets sold (monetary return for disposed assets) ☑ Equipment disposal complying with all applicable state, local, federal and country laws (risk mitigation) ☑ Address security and privacy (HIPPA, Graham-Leach-Bliley, Sarbanes Oxley, etc) through disk sanitization for all PC and Intel server hard drives (data security) ☑ A global full service disposition solution from a single asset recovery provider with facilities that have an IS) 9001 certified remanufacturing process and an ISO 14001 certified environmental management system (zero waste in landfills; risk mitigation; all ABC locations in scope) ☑ Documented life cycle reporting on all disposal activity with asset level detail including certificates of destruction for scrapped assets, disk sanitization confirmation and sales activity, all reported by machine serial number (risk mitigation) <p>Our approach to asset disposition and recovery is simple and straightforward. IBM Global Financing (IGF) will determine the value of VITA's assets based upon a predefined set of criteria. With consideration for technology, age, condition and market demand, there are two paths....equipment with value or equipment without value.</p> <ul style="list-style-type: none"> ☑ Equipment with value will be purchased by IGF based on the monthly pricing grid (based on current market value for type and technology of equipment) for the month equipment is received by IGF. This process, referred to as IGF's Fixed Price Take Out solution, provides customers with the ability to calculate the value that will be realized for each asset returned. Payment is guaranteed regardless of actual resale which mitigates our customer's risk. IGF holds the risk of selling the equipment in a timely manner. The asset verification process and processing of payment to the customer is performed within forty-five (45) days of receipt. Guaranteed buyback leverages GARS extensive experience and bandwidth in remarketing used equipment. Equipment not listed on the monthly grid will be evaluated on an individual basis for value determination.
	<p>☑ Equipment that is determined to not have value is sent to our disposal facility to be dismantled and scrapped utilizing processes that meet all state, local, and Federal laws and regulations. Upon receipt, the shipment is weighed and machines are inventoried via barcode label process. This method ensures that each customer's equipment is segregated from others and tracked through each step in the dismantle and disposal process. Equipment is dismantled utilizing an ISO 9001/14001 certified process and then mined for parts, components, metals, etc. to reduce the cost of disposition. (See Exhibit C for pricing for equipment that is determined to not have value)</p> <p>IBM Global Financing (IGF) is the largest lessor of I/T products. It is a critical component of our strategy to have a strong asset recovery and disposal program to process and remarket off-lease returns. In 1999, IGF's success in this space led the IBM Corporation to elect to utilize IGF to handle all of its surplus and excess equipment and materials disposition. It was a natural step for IGF to offer these same services to our clients like VITA.</p> <p>IGF's Asset Recovery Solutions (ARS) offers significant competitive advantages in the asset disposition marketplace:</p> <ul style="list-style-type: none"> ☑ Unmatched experience in the IT asset disposition business including remarketing and disposal based on 28+ years' experience ☑ Simple, straightforward approach to asset disposition keeping out of pocket costs as low as possible

If your proposed solution has included multiple manufacturers, please explain how your organization will service each manufacturer that would be represented in a contract.	N	This is an IBM products response only.
Does your proposed solution offer vendor agnostic configuration of hardware systems? If so, please explain.	N	IBMs response is for IBM configured parts only. We would however offer our assistance upon request to help compare different vendor offerings to assure the IBM solutions are
Does your proposed solution include the ability for the end user to track their shipment once it has left your warehouse? If so, please describe and provide screen shots.	Y	Customers can access real time order and delivery information through IBM's OSOL (Order Status OnLine) portal which is also made available for mobile devices – at no charge. OSOL links directly to carrier sites for the latest in delivery tracking information and includes optional report features. To access order information please visit: https://www-304.ibm.com/support/operations/us/en Additional information and screen shots can be found in the attached:
Does your firm ship all in stock orders same day? Please list shipping timelines and include caveats for delay, etc.	N	IBM's Service Level Objective is to ship forecasted servers and peripherals within 10 business days and forecasted racked servers and iDataPlex products within 15 business days from IBM's acceptance of a valid purchase order. The normal transit time for orders is 5-7 days. Expedited
Does your proposed solution allow the user to keep a failed hard drive while receiving a new hard drive that is covered under warranty? Please provide details and pricing if necessary.	N	IBM's hardware support coverage dictates that failed components are returned to IBM after being replaced to avoid being charged for the failed component. However- IBM does have a Hard Drive Retention Offering that allows customers to keep all failed hard drives. This solution is not included in this response, but can be contracted for an as needed basis. Prices are based on the specific serial# of the machine. Please contact IBM Sales for more information or to contract for the support.
For those Suppliers proposing Used/Refurbished devices, VITA has required a three year warranty on both PC's and Laptops. Please describe your solution when an Authorized User initiates a request for repair request including but not limited to shipping time, repair time at your facility, etc. For those not responding to the Used/Refurbished section, please place N/A in column B.	NA	

<p>Does your firm offer any other goods or services that would be a value to the Commonwealth? If so, please explain.</p>	<p>IBM is a full service company that offers solutions across a very wide spectrum. IBM is including Lab Services.</p> <p>IBM Systems Lab Services and Training, a team within Systems and Technology Group (STG) development (the consolidation of " STG Lab Services " and " IBM Training for Systems ") is a worldwide team of over 600 systems engineers, programmers, IT architects, and skills development professionals that help clients implement their systems solutions and achieve better IT optimization and solution value.</p> <p>STG has 25,000 engineers, programmers and architects who work in 35 labs worldwide, driving technology innovation that delivers system market leadership and client collaboration success. We apply the intellectual and technical capital of the IBM development laboratories to ensure IBM systems and storage products meet our clients' needs.</p> <p>Lab Services delivers offerings in support of all Systems and Technology Group system and storage platforms. The following list is an overview and not inclusive of all capabilities and offerings.</p> <p>System x, BladeCenter, Flex System and iDataPlex</p> <ul style="list-style-type: none"> ☑ System x Server & Storage Implementation & Skills Transfer ☑ System Management ☑ Virtualization , Server Consolidation (SCON), Migration ☑ High Availability (HA) ☑ Project Management (System Cluster 1350) ☑ iDataplex ☑ Blades Open Fabric Manager ☑ Virtualization Alternatives to VMware ☑ BCU Services <p>IT Optimization Studies/Virtualization</p> <ul style="list-style-type: none"> ☑ IT Systems Rationalization Study ☑ IT Systems Energy Rationalization Study
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	<ul style="list-style-type: none"> ☒ TLM Assessments and Workshops ☒ Advanced Virtualization Rapid Assessment ☒ COBRA Rapid Assessment ☒ IT Systems Energy Efficiency Rapid Assessment ☒ Virtualization Rapid Assessment for UNIX ☒ Rapid Assessment for Linux on System z ☒ IT Current State Assessment ☒ Application IT Infrastructure Study ☒ Blue Cloud Offerings Data Center Services ☒ Power and Cooling Trends and Data Center Best Practices ☒ IT Systems Energy Efficiency Assessment ☒ Data Center Thermal Analysis and Optimization ☒ Thermal Analysis and Optimization Utilizing Measurement and Management Technologies (MMT) ☒ Data Center Readiness Assessment for Rear Door Heat Exchanger ☒ Power & Cooling Planning for iDataplex ☒ Active Energy Manager Implementation Jumpstart Speech and Advanced Development Services ☒ Speech and Natural Language Processing ☒ Software Engineering ☒ Product Development ☒ Speech and Software Consulting IBM Training for Systems ☒ Customized classes ☒ Courseware ☒ Technical Conferences <p>Rates for Lab Services are provided in Exhibit C.</p> <p>We would welcome any opportunity to discuss additional needs and potential offerings that</p>
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EXHIBIT C

Servers

Intel/ AMD Based

Minimum Configurations

Tower Server Offering	Brand/Model	LIST	Percentage Discount (see note #1 below)	Discounted Price	Public Site to Verify Model #/List Price
Intel Xeon E3-1200v2 3.10GHz	3100M4/2582AC1	1,881.00	30.00%	1,316.70	
8GB Memory					
100 GB Hard Drive					
Onboard SATA					
DVD Writer					
No OS installed					
Gigabit Ethernet Adapter					
Rack Server Offering	Brand/Model	LIST	Percentage Discount (see note #1 below)	Discounted Price	Public Site to Verify Model #/List Price
Intel Xeon E5-2407 2.2GHz	3530M4/7160AC1	3,487.00	30.00%	2,440.90	
8GB Memory					
Onboard SATA					
100 GB Hard Drive					
Gigabit Ethernet Adapter					
No OS installed					
Blade Server Offering	Brand/Model	LIST	Percentage Discount (see note #1 below)	Discounted Price	Public Site to Verify Model #/List Price
Intel E5-2430 2.2GHz	HS23E/8038AC1	3,200.00	30.00%	2,240.00	
8GB Memory					
100 GB Hard Drive					
Gigabit Ethernet Adapter					
No OS installed					

Warranty is three years on-site for all server models and futur models. Additional warranty and services may be offered on the Services & Warranty tab

AMD processors must be at least equivalent to listed Inte processors

Minimum Percentage Discount for Server Accessories (see note #2)	
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Note #1 - The percentage discount will be the minimum discount for this model and all models sold in this category during the course of the contract. Winning suppliers may have the opportunity to increase percentage discount on a case by case basis during a RFQ process

Note #2 - These are items like blade enclosures, racks for rack mount servers, rack UPS units, KVM switches, Items such network switches, and Enterprise Storage are covered under other VITA contracts.

Services and Warranty

In the fields below, enter any services you chose to offer, as well as pricing

Service or Warranty Description	Rate	Discount	Comments
Warranty service pac upgrades		20%	
Maintenance		10%	
Lab Services p/n 49Y3780	\$7,500.00		
Non-Value IT equipment disposal and recycling services	\$.41 / per pound		Additional costs may apply for logistics

EXHIBIT D

Maintenance Levels proposed:

24x7x4 hours

IBM's objective is to respond on-site within 4 hours of IBM's receipt of your initial request for service, after the problem has been remotely evaluated and it has been determined that an on-site visit is necessary. Service is provided around the clock every day, including IBM holidays.

9x5/Next business day

IBM's objective is to respond on-site on the business day after IBM's receipt of your initial request for service, after the problem has been remotely evaluated and it has been determined that an on-site visit is necessary. Requests for service may be made 24 hours a day, however, service hours are 8 a.m. to 5 p.m. local time, Monday through Friday, excluding IBM holidays.

An IBM System Services Representative (SSR) will respond the next business day to trouble calls placed before 5 PM on a business day, Monday through Friday. It is IBM's objective to answer a call placed before 5 PM local time on Friday with an on-site service visit Monday. Calls placed after 5 PM may require an additional day for an on-site response. Thus, a call placed after 5 PM local time on Friday may be answered by an on-site service visit on Tuesday. The same principles apply to IBM holidays.

Warranty and Maintenance Services:

When a service request is opened, the IBM Support Center will verify the machine type and serial number, validate your customer profile, and assign a problem number. Your service request will be managed to completion by the Problem Resolution Center who will call you within one hour of the receipt of your call.

The Problem Resolution Center will:

- Review call record
- Perform problem determination
- Resolve problem over the phone if possible
- Determine skills and parts required
- Document customer request, scheduling requirements, special handling instructions
- Dispatch a Systems Services Representative (SSR) to your location. The SSR will arrive on-site at the location during our response time objectives, which are determined by the contracted level of service.
- Update customer records

IBM's proposed maintenance solution includes stocking standard components within the IBM Parts Inventory Management System (PIMS). SSRs are contacted and dispatched via a portable terminal known as a Research in Motion (RIM) communication device. These devices provide rapid two-way radio communication among IBM service personnel and management. SSRs may have the needed parts in their individual parts supplies. Via the portable electronic communication devices, your IBM SSR has electronic access to this entire parts distribution. Efforts are made to support all geographic areas with an availability level equal to total requirements.

1.1 Service for Machines (during and after warranty)

1.1.1 Service for Machines

IBM provides certain types of Service to keep Machines in, or restore them to, conformance with their Specifications. IBM will inform Customer of the available types of Service for a Machine. At its discretion, IBM will i) either repair or exchange the failing Machine and ii) provide the Service either at Customer's location or a service center. IBM manages and installs selected Engineering Changes that apply to IBM Machines and may also perform preventive maintenance.

Any feature, conversion, or Machine Upgrade IBM Services must be installed on a Machine which is i) the designated, serial-numbered Machine, if applicable, and ii) at an Engineering-Change level compatible with the feature, conversion, or Machine Upgrade.

When the type of Service requires that Customer deliver the failing Machine to IBM, Customer agrees to ship it suitably packaged (prepaid unless IBM specifies otherwise) to a location IBM designates. After IBM has repaired or exchanged the Machine, IBM will deliver it to Customer at IBM's expense unless IBM specifies otherwise. IBM is responsible for loss of, or damage to, Customer's Machine while it is i) in IBM's possession or ii) in transit in those cases where IBM is responsible for the transportation charges.

Customer agrees:

- a. to obtain authorization from the owner to have IBM service a Machine that Customer does not own;
- b. where applicable, before IBM provides Service, to --
 - (1) follow the problem determination and service request procedures that IBM provides,
 - (2) secure all programs, data, and funds contained in a Machine, and
 - (3) inform IBM of changes in a Machine's location.
- c. to follow the Service instructions that IBM provides (which may include installing Machine Code and other software updates either downloaded from an IBM Internet Web site or copied from other electronic media); and
- d. when Customer returns a Machine to IBM for any reason --
 - (1) to securely erase from any Machine all programs not provided by IBM with the Machine and data, including without limitation, the following: i) information about identified or identifiable individuals or legal entities ("Personal Data") and ii) Customer's confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, Customer agrees to transform such information (e.g., by making it anonymous) so that it no longer qualifies as Personal Data under applicable law;
 - (2) to remove all funds from Machines returned to IBM. IBM is not responsible for any funds, programs not provided by IBM with the Machine, or data contained in a Machine that Customer returns to IBM; and
 - (3) IBM may ship all or part of the Machine or its software to other IBM or third party locations around the world to perform its responsibilities under this Agreement, and Customer authorizes IBM to do so.

1.1.2 Replacements

When Service involves the exchange of a part or Machine, the item IBM replaces becomes IBM's property and the replacement becomes Customer's. Customer represents that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or maintenance Service status of the replaced item. Before IBM exchanges a part or Machine, Customer agrees to remove all

features, parts, options, alterations, and attachments not under IBM's service. Customer also agrees to i) ensure that the part or Machine is free of any legal obligations or restrictions that prevent its exchange and ii) transfer ownership and possession of removed parts to IBM.

Service for some IBM Machines involves IBM providing Customer with an exchange replacement for installation by Customer. Such exchange replacements may be i) a part of a Machine (called a Customer Replaceable Unit, or "CRU," e.g., keyboard, memory, or hard disk drive), or ii) an entire Machine. Customer may request IBM to install the replacement CRU or Machine, however, Customer may be charged for the installation. IBM provides information and replacement instructions with Customer's Machine and at any time on Customer's request. IBM specifies in the materials shipped with a replacement whether the failing CRU or Machine must be returned to IBM. When return is required, return instructions and a container are shipped with the replacement, and Customer may be charged for the replacement if IBM does not receive the failing CRU or Machine within 15 calendar days of Customer's receipt of the replacement.

1.1.3 Items Not Covered

Repair and exchange Services do not cover:

- a. accessories, supply items, consumables (such as batteries and printer cartridges), and structural parts (such as frames and covers);
- b. Machines damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by Customer or a third party;
- c. Machines with removed or altered Machine or parts identification labels;
- d. failures caused by a product for which IBM is not responsible;
- e. service of Machine alterations; or
- f. service of a Machine on which Customer is using capacity or capability, other than that authorized by IBM in writing.

1.2 Warranty Service Upgrade

For certain Machines, Customer may select a Service upgrade from the standard type of warranty Service for the Machine. IBM charges for the Service upgrade during the warranty period.

Customer may not terminate the Service upgrade or transfer it to another Machine during the warranty period.

When the warranty period ends, the Machine will convert to maintenance Service at the same type of Service Customer selected for warranty Service upgrade.

1.3 Maintenance Coverage

When Customer orders maintenance Service for Machines, IBM will inform Customer of the date on which maintenance Service will begin. IBM may inspect the Machine within one month following that date. If the Machine is not in an acceptable condition for service, Customer may have IBM restore it for a charge or Customer may withdraw its request for maintenance Service. However, Customer will be charged for any maintenance Service that IBM has performed at Customer's request.

1.4 Automatic Service Renewal

Renewable Services renew automatically for a same length contract period unless either party provides written notification (at least one month prior to the end of the current contract period) to the other of its decision not to renew.

During an automatic renewal period, Customer may terminate the Service on one month's written notice, and IBM will provide Customer a prorated credit for any unused Services for which Customer has paid in advance.

1.5 Termination and Withdrawal of a Service

Either party may terminate a Service transaction if the other materially fails to meet its obligations concerning the Service.

Customer may terminate a Service, on notice to IBM provided Customer has met all minimum requirements and paid any adjustment charges specified in the applicable Attachments and Transaction Documents.

For a maintenance Service, Customer may terminate without adjustment charge, provided any of the following circumstances occur:

- a. Customer permanently removes the eligible Product, for which the Service is provided, from productive use within Customer's Enterprise;
- b. the eligible location, for which the Service is provided, is no longer controlled by Customer (for example, because of sale or closing of the facility); or
- c. the Machine has been under maintenance Service for at least one year and Customer gives IBM one month's written notice prior to terminating the maintenance Service.

Customer agrees to pay IBM for i) all charges for Services IBM provides and any Products and Materials IBM delivers through Service termination, and ii) reimbursable expenses IBM incurs through Service termination. If Customer terminates without cause, Customer also agrees to pay any applicable adjustment or termination charges and for expenses IBM incurs as a result of such termination (which IBM will take reasonable steps to mitigate).

IBM may withdraw a Service or support for an eligible Product on three months' written notice to Customer. If IBM withdraws a Service for which Customer has prepaid and IBM has not yet fully provided it to Customer, IBM will give Customer a prorated refund.

Any terms that by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees.

Master Services Attachment for ServiceElite

1. Scope of Services

IBM will provide you Services as described in this Attachment and, if applicable, its Statements of Work and Change Authorizations to support your hardware and software products (called “Eligible Machines”, “Eligible Programs”, and together “Eligible Products”). Services are available for Eligible Products normally used for business, professional, or trade purposes, rather than personal, family, or household purposes.

IBM will identify the Eligible Products, the Services that apply to them, and the Services transaction contract period in Schedules that reference this Attachment and any associated Statements of Work and Change Authorizations. Each Schedule will also identify the Specified Locations at which the Services will be provided. A Specified Location may be your entire information processing environment, or a portion thereof, which may be resident at multiple sites or a single building.

The specific terms regarding Eligible Machine Services and Eligible Program Services contained in this Attachment and its Statements of Work and Change Authorizations apply only when you have contracted for an associated Eligible Machine maintenance Service or Eligible Program support Service as specified in a Schedule.

2. Sales through IBM and IBM Business Partners

You may acquire Services through IBM or an IBM Business Partner, or their designee, authorized to resell IBM Services. IBM Business Partners establish the price and general business terms at which they market the IBM Services to you and they will communicate these directly to you for all transactions they initiate with you. However, IBM establishes the terms of each Service IBM provides and our general business responsibilities associated with these Services. Therefore, IBM will provide the Services as described in this Attachment and its associated Statements of Work and Change Authorizations (and their Schedules).

Whenever IBM is required to provide notification to you or you are required to provide notification to IBM, each of us also agrees to notify the applicable IBM Business Partner if one is engaged in the transaction.

In the event that you have contracted through an IBM Business Partner that is no longer able to offer IBM Services for any reason, IBM will so notify you in writing. You may continue to receive the Services by instructing IBM (in writing) to transfer administration of the Services to either 1) another IBM Business Partner of your choice (who may require you to first execute one of their agreements) that is approved to offer you IBM Services, or 2) IBM under a standard direct marketing relationship that enables IBM to generate charges and invoicing.

IBM is not responsible for 1) any actions of IBM Business Partners or their designees, 2) any additional obligations they have to you, or 3) any products or services that they supply to you under their agreements.

3. IBM Responsibilities

When you contract for an applicable Service, IBM agrees to deliver the Service in accordance with the terms and responsibilities identified in the Service description set out in this Attachment or an associated Statement of Work or Change Authorization. For basic maintenance of IBM Machines, the Service description is set out in our Agreement (referenced in the signature block below).

4. Your Responsibilities

When you contract for an applicable Service, you agree:

1. to provide IBM with an inventory in which you identify all Eligible Products to be covered at each Specified Location and to notify IBM whenever you move, add, or delete Eligible Products at an existing Specified Location or set up new Specified Locations;
2. that when an applicable Service includes IBM providing you with access codes to electronic diagnostic tools, information databases, or other Service delivery facilities, you will limit the use of these to only those who are authorized to use them under your control and only in support of Eligible Products and Services identified in Schedules;

3. to provide IBM with the necessary information it requests to perform Services which are related to its provision of the Services to you and to notify IBM of any changes;
4. to pay any communications charges associated with accessing these Services including but not limited to phone and internet connection charges, unless IBM specifies otherwise in writing;
5. to use the information obtained under these Services only for the support of the information processing requirements within your Enterprise;
6. to securely erase from any Machine that you return to IBM for any reason all programs not provided by IBM with the Machine and data, including without limitation, the following: 1) information about identified or identifiable individuals or legal entities ("Personal Data") and 2) your confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, you agree to transform such information (e.g. by making it anonymous or encrypting it) so that it no longer qualifies as Personal Data under applicable law. You also agree to remove all monetary funds from Machines returned to IBM. IBM is not responsible for any funds, programs not provided by IBM with the Machine, or data contained in a Machine that you return to IBM. You acknowledge that, to perform its responsibilities, IBM may ship all or part of the Machine or its software to other IBM or third party locations around the world, and you authorize IBM to do so;
7. to acknowledge that Services will be performed on-site at your location, and off-site at IBM location(s). You also understand and acknowledge that IBM is permitted to use global resources (non-permanent residents used locally and personnel in locations worldwide) for delivery of Services; and
8. to acknowledge that some devices (for example, solid state devices) have read/write or wear limitations as documented in the hardware product specifications. When these devices have reached the wear limitations, they are not covered under maintenance Services under which IBM agrees to provide support, maintenance, or replacement of defective, failed or any other parts, unless such terms specifically identify the device by description and/or part number and describes the terms of support or maintenance coverage applicable to it.

5. Mutual Responsibilities

Each of us will comply with applicable export and import laws and regulations, including those of the United States that prohibit or limit export of certain uses or to certain end users, and each of us will cooperate with the other by providing all necessary information to the other, as needed for compliance. Each of us shall provide the other with advance written notice prior to providing the other party with access to data requiring an export license.

6. Automatic Inventory Increase for Machine and Software Maintenance Services

If specified as a selected option in the Schedule, IBM will automatically increase the inventory count and associated Services at Specified Locations per the terms set out below.

OPTION #1 - MACHINE MAINTENANCE SERVICES

IBM will automatically increase the inventory count and associated Machine maintenance Services whenever:

1. an Eligible IBM Machine is added to the inventory. If the Machine is under warranty when added, maintenance Services will commence at warranty exit. If the Machine is not under warranty when added, maintenance Services will commence at the later of a) the date of installation or b) the previous yearly anniversary of the start of the transaction contract period. IBM Machines specifically excluded from coverage at transaction contract period start will remain outside the scope of this Section unless you request IBM add them during the transaction contract period. However, all Eligible IBM Machines added to your inventory during the transaction contract period will be included in the inventory count and receive maintenance Services as set out in this Section.
2. an Eligible non-IBM Machine, of the same type as other non-IBM Machines already covered at that Specified Location, is added to the inventory. If the Machine is under warranty when added, maintenance Services will commence at warranty exit. If the Machine is not under warranty when added, maintenance Services will commence at the later of a) the date of installation or b) the previous yearly anniversary of the start of the transaction contract period.

The maintenance Services that apply for these Machines will be the same as that which you are receiving for all other Eligible Machines of the same type at the Specified Location, unless agreed upon in writing by both parties.

Newly installed IBM Machines of the same type for which you have already selected Warranty Service Upgrade will be added at date of actual installation and will be covered at the same Warranty Service Upgrade support level.

If at any time either of us requests a review of the inventory count, each of us will provide reasonable cooperation to the other in updating the last formal inventory.

OPTION #2 - SOFTWARE SERVICES

IBM will automatically increase the inventory count and associated software Services whenever an Eligible Program licensed for use on an Eligible IBM Machine is added to the inventory. The software maintenance Services that apply for these programs will be the same as that which you are receiving for all other copies of the Program licensed for use on Eligible IBM Machines of the same type at the Specified Location.

These software Services will commence immediately upon addition of the Eligible Program to the inventory except that for software maintenance Services, a) if the Program is covered under the Agreement for Acquisition of Software Maintenance when added to the inventory, then software maintenance Services via ServiceElite will commence at the expiration date of that support period, or b) if the Program is not covered under the Agreement for Acquisition of Software Maintenance when added to the inventory, then software maintenance Services via ServiceElite will commence immediately and After License Fees may apply.

If at any time either of us requests a review of the inventory count, each of us will provide reasonable cooperation to the other in updating the last formal inventory.

7. Charges and Payment

For sales through IBM, your charges are calculated taking into account your Service selections, price protection option, payment option, and for prepayments, length of the prepay period.

FOR EACH TRANSACTION PACKAGE YOU MAY SELECT ONE OF THE FOLLOWING 3 PRICE PROTECTION OPTIONS. YOUR SELECTION WILL BE SPECIFIED IN THE SCHEDULE ASSOCIATED WITH THAT TRANSACTION PACKAGE.

OPTION #1 ANNUAL - PRICE PROTECTION DURING EACH TRANSACTION CONTRACT YEAR ONLY

IBM may revise charges. However, any rate increase will not take effect until the next yearly anniversary of the start of the transaction contract period. At the start of each transaction contract year, you will be invoiced at the charge rates that are then in effect and that invoice will serve as your notice of charge rate changes.

All newly added Eligible Products and Services, as well as changes to existing Eligible Product configurations and Services, will assume the charge rate that applied for these at the previous yearly anniversary of the start of the transaction contract period. Eligible Products and Services that become generally available during the transaction contract period will be added at the charge rate that applied on their initial availability date.

OPTION #2 FULL - PRICE PROTECTION FOR ENTIRE TRANSACTION CONTRACT PERIOD, INCLUDES PROTECTION FOR NEWLY ADDED MACHINE TYPES

For the entire transaction contract period, charges for included Eligible Product configurations and Services will not increase. All newly added Eligible Products and Services, as well as changes to existing Eligible Product configurations and Services, will assume the charge rate that applied for these at transaction contract period start. Eligible Products and Services that become generally available during the transaction contract period will be added at the charge rate that applied on their initial availability date. You will receive the benefit of a decrease in applicable charges for amounts which become due on or after the effective date of the decrease.

OPTION #3 PREPAY - PRICE PROTECTION FOR TRANSACTION CONTRACT PERIOD PREPAY

Since you have selected to prepay for the entire transaction contract period, you will not be subject to increases in charges (during that period) for included Eligible Product configurations and Services. All newly added Eligible Products and Services, as well as changes to existing Eligible Product

configurations and Services, will assume the charge rate that applied for these at transaction contract period start with adjustment for the reduced prepay period. Eligible Products and Services that become generally available during the transaction contract period will be added subject to the charge rate that applied on their initial availability date with adjustment for the reduced prepay period. If you elect to have these charge terms apply for charges during any renewal transaction contract period (as recalculated at the start of each renewal period), you must provide IBM written notification (at least one month prior to the start of the renewal period) and prepayment for the entire renewal period. Otherwise, charges for the renewal period will revert to a quarterly billing cycle under the terms set out for Option #1 above.

FOR EACH TRANSACTION PACKAGE, THE FOLLOWING CHARGE ADJUSTMENT TERMS APPLY.

Total Services charges may be adjusted whenever:

1. a review of the inventory count indicates a change from the last accounting; or
2. a Specified Location is affected by a change that results in additional costs (e.g. a change in tax rates), Eligible Machine type, or Service is added, deleted, or changed.

For sales through IBM Business Partners, your IBM Business Partner sets the charges and terms governing charges. Your IBM Business Partner may impose an additional charge for some actions (e.g. termination), or for IBM's provision of some additional services (e.g. Service upgrades). These actions or additional services are identified in this Attachment and its associated Statements of Work and Change Authorizations with an asterisk ("*"). Where you see an asterisk, check with your IBM Business Partner to determine if you will incur an additional charge or may be entitled to a credit or refund. You will make payment directly to your IBM Business Partner.

IBM may charge you directly for certain expenses IBM incurs in performance of a Service for you (e.g. actual travel and living expenses, out-of-pocket expenses). IBM will not incur these expenses without your prior written approval.

8. Renewal and Termination

IBM will automatically renew Services unless you or your IBM Business Partner request otherwise. For each transaction the Schedule will specify the number of years (0 or greater) in the Renewal Contract Period. Whenever this number is greater than 0, IBM will renew the applicable Services at the end of the transaction contract period for the number of years specified. Thereafter, IBM will automatically renew the Services for same length periods unless you or your IBM Business Partner notify IBM in advance of your desire to change the length of the renewal. You, your IBM Business Partner, or IBM can select not to renew by providing written notification (at least one month prior to the end of the current transaction contract period) to the others of its decision not to renew. Nonrenewal notification sent to you by IBM or received by IBM from either you or your IBM Business Partner will result in IBM ceasing to provide you the applicable Services at the end of the current transaction contract period.

In the case of renewals, charges are recalculated at the start of each renewal period. For sales through IBM, the new charges will be based on the length of the Renewal Contract Period and then current charges associated with your contracted a) Services, b) price protection option, and c) payment option.

One of the following termination provisions will apply based on the length of the transaction contract period specified in the Schedule.

PROVISION #1 - ONE YEAR TRANSACTION CONTRACT PERIOD

You may terminate Services for an Eligible Product, on notice to IBM, if you permanently remove it from productive use within your Enterprise. Otherwise, Services must be under contract for at least one year. If you select automatic renewals, you may also terminate Services after the first full year of Service by providing IBM one month's written notice prior to the end of your first year of Service. You will receive a credit for any remaining prepaid period associated with Services you terminate in accordance with this provision.* You may also terminate Services by providing IBM one month's written notice, after the Services have been under contract for at least one year. You will receive a credit for any remaining prepaid period associated with Services you terminate in accordance with this provision.*

PROVISION #2 - MULTI-YEAR TRANSACTION CONTRACT PERIOD

You have committed to continue Services for the entire transaction contract period. However, you may terminate Services for an Eligible Product, on notice to IBM, if you permanently remove it from productive

use within your Enterprise. Otherwise, if you choose to terminate Services and these are not being replaced by equivalent Services, you may do so by providing IBM one month's written notice and paying an adjustment fee equal to the charges for a number of months equal to the number of years in the Transaction Contract Period.* However, the Services must have been under contract for at least one year upon termination. After allowing for applicable adjustments, you will receive a credit for any remaining prepaid period associated with Services you terminate in accordance with this provision.*

You have committed to continue Services for the entire transaction contract period. However, you may terminate Services for an Eligible Product, on notice to IBM, if you permanently remove it from productive use within your Enterprise. You may also terminate Services immediately prior to the start of any fiscal year for which funds have not been appropriated. You agree to request such funds from the applicable legislative body.

Otherwise, if you choose to terminate Services and these are not being replaced by equivalent Services, you may do so by providing IBM one month's written notice, however, the Services must have been under contract for at least one fiscal year upon termination.

Termination adjustment fees will not apply and you will receive a credit for any remaining prepaid period associated with Services you terminate in accordance with this provision.*

9. Services

Warranty Service Upgrade

For certain Eligible Machines, you may select a Service upgrade from the standard type of warranty Service for the Machine. IBM provides Service for Machines as described in our Agreement but charges for the upgrade in type of Service during the warranty period.

You may not terminate the Service upgrade or transfer it to another Machine during the warranty period. When the warranty period ends, the Machine will become part of your standard inventory count and will convert to maintenance Service at the same type of Service you selected for warranty Service upgrade.

Maintenance of IBM Machines

IBM will provide Service for Machines, as described in our Agreement, for those Eligible IBM Machines specified in the Schedule.

Certain Machine types may require the installation and use of remote connectivity tools and equipment for direct problem reporting, remote problem determination and resolution.

A machine is only considered "Eligible" if it is operational and in conformance with its official published specifications on the contract start date. All Eligible Machines must be in good working order. For more details contact your sales representative.

If your warranty or maintenance Service coverage lapses for a Machine by 90 days or more beyond the end of the contracted warranty or maintenance coverage period, and you subsequently request to restart your Service coverage, a Re-establishment Fee will be applied. The fee is based on the number of days of lapsed coverage, up to an amount equal to 365 days of the applicable hardware maintenance service fees for the specific Machine(s). The Machine(s) must meet IBM's safety and serviceability requirements from the date of Service coverage. IBM reserves the right to inspect the Machines within one month from the start of Service. Where Machine(s) do not meet IBM's safety and serviceability requirements, you agree to pay for any repairs deemed necessary by IBM prior to IBM accepting the applicable Machine for ongoing Service coverage.

Maintenance of Non-IBM Machines

IBM will provide Service for Machines, as described in our Agreement, for those Eligible non-IBM Machines specified in the Schedule. Unless specified otherwise in the Schedule, Service is provided only for the manufacturer's base configuration for each covered Machine model. You are responsible for following the manufacturer's and IBM's provided guidelines pertaining to operator responsibilities, maintenance procedures, and supplies prior to placing a Service request.

Repair of non-IBM Machines is subject to the availability of repair parts and any technical support required of the original manufacturer. Repair parts will be functionally equivalent to those replaced. They may be new or used and may have been manufactured by other than the original manufacturer. You may request that IBM use repair parts manufactured by the original manufacturer when these are available, but there may be an additional charge for these parts.*

In addition to items set forth in the Agreement, IBM's support does not cover:

1. Machine installation, engineering change activity, or preventive maintenance;
2. correction of date related errors. IBM will make the final determination of whether a date related error is the source of the problem;
3. service of microcode or firmware; or
4. service of features, parts, or devices not supplied by either a) the Machine's original manufacturer or b) IBM during the performance of this Service.

Upon written notice, IBM may terminate coverage for an Eligible non-IBM Machine due to lack of available repair parts or lack of original manufacturer technical support.

Eligible non-IBM Machines must meet IBM's safety and serviceability requirements. IBM reserves the right to inspect a Machine within one month from the start of Service. If the Machine is not in an acceptable condition for Service, IBM will notify you and terminate coverage for the inspected machine.

You agree to provide IBM one month's written notice prior to terminating coverage for a Machine being permanently removed from productive use within your Enterprise. You will receive a prorated credit for any remaining prepaid period associated with the terminated coverage unless indicated otherwise in the transaction document.

IBM Software Maintenance

IBM will provide software maintenance support, as described below, for those Eligible Programs for which you are licensed and for which you order this Service.

General:

1. IBM makes available to you the most current commercially available version, release or update to all of the Eligible Programs for which you acquire support under this Service, should any be made available. Information on ordering versions, releases or updates can be found at <http://www-05.ibm.com/servers/eserver/ess/OpenServlet.wss>, and selecting the Entitled Software Update ("ESU") screen tab.
2. IBM provides you with assistance for your a) routine, short duration installation and usage (how-to) questions and b) code defect related questions.
3. IBM provides assistance via telephone and, if available, electronic access, only to your Information Systems ("IS") technical support personnel during normal business hours (normal business hours are 8:00 a.m. to 5:00 p.m. in the local time zone where you receive this Service, Monday through Friday, excluding national holidays). This assistance is not available to your end users. IBM provides Severity 1 assistance 24 hours a day, every day of the year. Consult the IBM Software Support Guide, which may be found at <http://www14.software.ibm.com/webapp/set2/sas/f/handbook/home.html> for details. A 24x7 (every day of the year) all severity option may be available for an extra charge.* During normal business hours, IBM's response time objective is two hours for voice and electronic problem submissions. For voice problem submissions during other than normal business hours, IBM's response time objective for critical problems (Severity 1) is two hours and if available and you select the 24x7 all severity option, four hours for non-critical problems. For electronic problem submissions during other than normal business hours, IBM's response time objective is within two hours of the start of normal business hours on the next business day. IBM's initial response (either voice or electronic) may result in resolution of your problem or it will form the basis for determining what additional actions may be required to achieve technical resolution of your problem. IBM is not responsible for delays in electronic response delivery caused by systems and network problems.
4. In some instances, IBM may request that you allow it to remotely access your system to assist you in isolating the software problem cause. You will remain responsible for adequately protecting your system and all data contained therein whenever we remotely access it with your permission. If you decline providing remote access to your system by IBM, IBM may be limited in its ability to fully provide the Services necessary to resolve the problem and if IBM is unable to do so, IBM will notify you and close out the service call.

5. This Service does not include assistance for a) the design and development of applications, b) your use of Eligible Programs in other than their specified operating environment, or c) failures caused by products for which IBM is not responsible under this Service.
6. This Service is provided solely for servers that are located within the United States. For calls that originate from outside of the United States: 1) toll free telephone access is not available, 2) "8:00 a.m. to 5:00 p.m. in the local time zone" is defined as the time zone where your designated Point of Contact resides, Monday through Friday (excluding national holidays), 3) replies or other return communication to the caller will be via a United States telephone number provided by you or electronic means only, 4) software "traps" or other tools that may be necessary to diagnose problems will be sent only to the United States server location, and 5) the diagnosis and repair of data encryption will be discussed only with personnel at the United States server location; and
7. all support will be provided in the English language only.

Eligible Programs: Licensed programs for which this Service is available are listed at: www.ibm.com/services/supline/products/ or may be obtained from your IBM representative. The listing of Eligible Programs contains the last date of service for each respective release of licensed programs. IBM will support only current releases. It is your responsibility to ensure that, when calling in for service, your software is current.

Software Maintenance After License Fee: The Software Maintenance After License fee is a one time charge to resume Software Maintenance if you a) did not renew this Service prior to the end of the then current support period or b) terminated this Service. The new support period in such an instance begins on the date that IBM accepts your order.

Optional Feature Support

In addition to your purchase of IBM Maintenance for selected IBM products and/or Software Maintenance for your AIX Operating System and selected License Program Products, you may purchase IBM's Support via USA Citizens for software or Support via USA Citizens for hardware feature. This feature provides standard IBM remote hardware and software support delivered and managed exclusively by USA Citizens who are located in the continental United States. IBM Support via USA Citizens is available via voice support during prime shift only for software. Your hardware support will be 24x7. Each time you call IBM, this feature's process will be engaged only after you identify yourself as a Support via USA Citizens customer and IBM verifies your entitlement for this feature. Your hardware error data for analysis and call data will be managed by USA Citizens only.

Machine Control Program Remote Support

This remote support Service is provided only for Machine Control Programs. The term "Machine Control Program" ("MCP") means code delivered with an IBM Machine that executes below the external user interface (e.g. is implemented in a part of storage that is not addressable by user programs).

IBM will provide you remote assistance (via telephone from IBM's support center or via electronic access) in response to your routine installation, configuration, and usage (how-to) questions pertaining to MCPs on your covered IBM Machines. This assistance is provided during normal business hours (8:00 a.m. to 5:00 p.m. in the local time zone where you receive the Service, Monday through Friday, excluding national holidays). For an additional charge*, you may upgrade your Service hours of coverage to 24 x 7.

Remote Support does not include assistance for 1) the design and development of code, 2) your use of a MCP in other than its specified operating environment, 3) use on other than the specified machine, or 4) failures caused by products for which IBM is not responsible under this Service. This Service does not include on-site assistance at your location.

This 1) Attachment, 2) its applicable Transaction Documents (e.g. Statements of Work, Change Authorizations and Schedules), and 3) the IBM Customer Agreement (or an equivalent agreement in effect between us) identified below ("Agreement") comprise the complete agreement regarding the Services described in this Attachment and its applicable Transaction Documents and replace any prior oral or written

communications between you and IBM. Each party accepts the terms of this Attachment by signing this Attachment (or another document that incorporates it by reference) by hand or, where recognized by law, electronically.

As used in this Attachment, "you" and "your" refer to the transaction contracting entity that is part of the Enterprise identified below.

Agreed to:

(Enterprise Name)

By _____

Authorized signature

Name (type or print):

Date:

Enterprise number: 9414000

Enterprise address:

Agreed to:

International Business Machines Corporation

By _____

Authorized signature

Name (type or print):

Date:

Reference Agreement number: HQ12291

Attachment number:

IBM address:



IBM Customer Agreement for Products

This IBM Customer Agreement for Products (called the "Agreement"), including its applicable Attachments and Transaction Documents, is the complete agreement regarding transactions by which Customer purchases Machines and obtains Program licenses from International Business Machines Corporation ("IBM") through IBM's public website (www.ibm.com) or an IBM telesales representative, and replaces all prior oral or written communications, representations, understandings, warranties, promises, covenants, and commitments between Customer and IBM. In entering into this Agreement, including each Attachment and Transaction Document, neither party is relying on any representation that is not specified in this Agreement. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

IBM will accept Customer's order only if i) Customer accepts the terms of this Agreement, ii) Customer provides a valid ship-to address in the United States, and iii) the Machine is available. Customer accepts the terms of this Agreement, without modification, by i) clicking to accept these terms and completing this transaction when ordering online through the website, ii) placing the order with an IBM telesales representative, or iii) by using the Machine or allowing others to do so.

1. General Terms

1.1 Attachments and Transaction Documents

Additional terms for Products are in documents called "Attachments" and "Transaction Documents" provided by IBM. In general, Attachments contain terms that may apply to more than one Products transaction, while Transaction Documents (such as a supplement, schedule, invoice, exhibit, or addendum) contain specific details and terms related to each individual transaction. Customer may receive one or more Transaction Documents for a single transaction. Attachments and Transaction Documents are part of this Agreement only for those transactions to which they apply. Each transaction is separate and independent from other transactions.

If there is a conflict among the terms of this Agreement, Attachments, and Transaction Documents, those of an Attachment prevail over those of this Agreement, and the terms of a Transaction Document prevail over those of both this Agreement and an Attachment.

1.2 Acceptance of Terms

Customer accepts the terms in Attachments and Transaction Documents by i) signing the Attachments or Transaction Documents (by hand or electronically), ii) using the Product or allowing others to do so, or iii) making any payment for the Product.

A Product becomes subject to this Agreement when IBM accepts Customer's order by i) sending Customer a Transaction Document, or ii) shipping the Machine or making the Program available to Customer. Any Attachment or Transaction Document will be signed by both parties if requested by either party.

1.3 Delivery

Delivery dates and ship dates are estimates unless otherwise specifically agreed in a Transaction Document. Transportation charges, if applicable, will be specified in a Transaction Document. For Programs IBM provides to Customer in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Customer and IBM.

1.4 Charges and Payment

1.4.1 Charges

A Transaction Document specifies the amount payable for Products, as one-time or recurring charges. Additional charges may apply (such as special handling). IBM will inform Customer in advance whenever additional charges apply. Recurring charges for a Product begin on its Date of Installation.

1.4.2 Usage Charges

One-time and recurring charges may be based on measurements of actual or authorized use (for example, authorized capacity for Machines or number of users or processor size for Programs). Customer agrees to provide actual usage data as described in an Attachment or Transaction Document. If a Transaction Document provides an estimated total charge for usage charges, the estimate is for

planning purposes only. IBM invoices charges based on Customer's actual or authorized use, subject to any specified minimum commitment.

If Customer makes changes to its environment that impact usage charges, Customer agrees to promptly notify IBM and pay any applicable charges. Recurring charges will be adjusted accordingly. In the event that IBM changes the basis of measurement, its terms for changing charges will apply.

1.4.3 Changes to Charges

From time to time, IBM may change its charges. Customer receives the benefit of a decrease in charges for amounts that become due on or after the effective date of the decrease.

Unless provided otherwise in an Attachment or Transaction Document, IBM may increase recurring charges for Products provided under this Agreement, by giving Customer at least three months' written notice. An increase applies on the first day of the invoice or charging period on or after the effective date IBM specifies in the notice.

IBM may increase one-time charges without notice. However, an increase to one-time charges does not apply to Customer if i) IBM receives the order before the announcement date of the increase and ii) one of the following occurs within three months after IBM's receipt of the order: a) IBM ships Customer the Machine or makes the Program available to Customer; b) Customer makes an authorized copy of a Program or distributes a chargeable component of a Program to another Machine; or c) a Program's increased use charge becomes due.

1.4.4 Payment

Credit or debit card transactions will be processed at time of order. For payment by other than credit or debit card transactions, amounts are due upon receipt of invoice and payable as specified in a Transaction Document. Customer agrees to pay accordingly, including any late payment fee. Payment may be made electronically to an account specified by IBM or by other means agreed to by the parties (for example, credit or debit card transactions).

If a Product is quoted with an incorrect price (for example, due to typographical error or error in pricing information), IBM has the right to refuse or cancel any orders placed for the Product quoted at the incorrect price, even if IBM has confirmed the receipt of Customer's order and charged Customer's credit or debit card. If IBM has charged Customer's credit or debit card but subsequently canceled Customer's order, IBM will promptly issue a credit to Customer's credit or debit card account for the amount charged.

1.4.5 Taxes

If any authority imposes upon any transaction under this Agreement a duty, tax, levy, or fee, excluding those based on IBM's net income, then Customer agrees to pay that amount as specified in an invoice, unless Customer supplies exemption documentation. Customer is responsible for any personal property taxes for each Product from the date IBM ships it to Customer. For Programs that IBM delivers electronically to Customer and for which Customer claims a state sales and use tax exemption, Customer and IBM agree that no tangible personal property (e.g., media and publications) is transferred to Customer.

1.5 Changes to the Agreement Terms

In order to maintain flexibility in our business relationship, IBM may change the terms of this Agreement by providing Customer at least three months' written notice. However, these changes are not retroactive. They apply, as of the effective date IBM specifies in the notice, only to new orders, on-going transactions that do not expire, and transactions with a defined renewable contract period. For transactions with a defined renewable contract period, Customer may request that IBM defer the change effective date until the end of the current contract period.

Customer acknowledges its agreement to have these changes apply for such transactions by i) placing new orders for Products after the change effective date, ii) failing to request that the change effective date be deferred until the start of the next renewal period, iii) allowing transactions to renew after receipt of the change notice, or iv) failing to terminate non-expiring transactions prior to the change effective date. Changes to charges are implemented as described in the Charges and Payment section above. Otherwise, for a change to be valid, both parties must sign it.

1.6 IBM Business Partners

IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Products and services. Customer may order Products or services that are promoted or marketed to Customer by IBM Business Partners or other suppliers, however, i) this

Agreement applies only if a Transaction Document subject to this Agreement is provided for the specific transaction, and ii) such IBM Business Partners and suppliers remain independent and separate from IBM. IBM is not responsible for the actions or statements of IBM Business Partners or other suppliers, any obligations either has to Customer, or any products or services that they supply to Customer under their agreements.

1.7 Intellectual Property Protection

For purposes of this Intellectual Property Protection section, the term "Product" also includes Machine Code.

1.7.1 Third Party Claims

If a third party asserts a claim against Customer that an IBM Product that IBM provides to Customer under this Agreement infringes that party's patent or copyright, IBM will defend Customer against that claim at IBM's expense and pay all costs, damages, and attorney's fees that a court finally awards against Customer or that are included in a settlement approved in advance by IBM, provided that Customer:

- a. promptly notifies IBM in writing of the claim;
- b. allows IBM to control, and cooperates with IBM in, the defense and any related settlement negotiations; and
- c. is and remains in compliance with the Product's applicable license terms and Customer's obligations under the Remedies section below.

1.7.2 Remedies

If such a claim is made or appears likely to be made, Customer agrees to permit IBM, in IBM's discretion, either to i) enable Customer to continue to use the Product, ii) modify it, or iii) replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, then on IBM's written request, Customer agrees to promptly return the Product to IBM and discontinue its use. IBM will then give Customer a credit equal to: for a Machine, Customer's net book value calculated according to generally-accepted accounting principles; and for an ICA Program, the amount Customer paid IBM for the Program's license or 12 months' charges (whichever is less).

1.7.3 Claims for Which IBM is Not Responsible

IBM has no obligation regarding any claim based on any of the following:

- a. anything provided by Customer or a third party on Customer's behalf that is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer's behalf;
- b. a Product's use other than in accordance with its applicable licenses and restrictions or use of a non-current version or release of a Product, to the extent a claim could have been avoided by using the current release or version;
- c. any modification of a Product made by Customer or by a third party on Customer's behalf or the combination, operation, or use of a Product with any other Product, hardware device, program, data, apparatus, method, or process;
- d. the distribution, operation or use of a Product outside Customer's Enterprise;
- e. running or executing an ICA Program on other than a Designated Machine; or
- f. a non-IBM Product or an Other IBM Program.

This Intellectual Property Protection section states IBM's entire obligation and Customer's exclusive remedy regarding any third party intellectual property claims.

1.8 Limitation of Liability

1.8.1 Items for Which IBM May Be Liable

Circumstances may arise where, because of a default on IBM's part or other liability, Customer is entitled to recover damages from IBM. Regardless of the basis on which Customer is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate arising from or related to each Product or otherwise arising under this Agreement will not exceed the amount of any actual direct damages up to the charges (if recurring, 12 months' charges apply) for the Product that is the subject of the claim. For purposes of this Limitation of Liability section, the term "Product" also includes Machine Code.

This limit also applies to any of IBM's subcontractors and Program developers. It is the maximum for which IBM and its subcontractors and Program developers are collectively responsible. The following amounts are not subject to a cap on the amount of damages:

- a. payments referred to in the Intellectual Property Protection section above; and
- b. damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable.

1.8.2 Items for Which IBM Is Not Liable

Except as expressly required by law without the possibility of contractual waiver, under no circumstances is IBM, its subcontractors, or Program developers liable for any of the following even if informed of their possibility:

- a. loss of, or damage to, data;
- b. special, incidental, exemplary, or indirect damages or for any economic consequential damages; or
- c. lost profits, business, revenue, goodwill, or anticipated savings.

1.9 Compliance Verification

Upon reasonable notice, IBM may verify the usage data and other information affecting the calculation of charges under this Agreement. Such verification will be conducted in a manner that minimizes disruption to Customer's business and may be conducted on Customer's premises, during Customer's normal business hours. Customer agrees to i) provide records, system tools outputs, and other electronic or hard copy system information reasonably necessary for such verification, and ii) promptly pay any additional, valid charges and other liabilities determined as a result of such verification.

IBM's right to verify Customer's usage data and other information affecting the calculation of charges also includes the right to verify Customer's compliance with all other terms of this Agreement (including applicable Attachments and Transaction Documents). IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

Customer agrees to create, retain, and provide to IBM and its auditors written records, system tools outputs, and other system information sufficient to provide auditable verification that Customer's installation and running or executing ICA Programs complies with the Agreement terms, including IBM's applicable licensing and pricing terms. IBM will notify Customer in writing if any such verification indicates that Customer is not in compliance with Agreement terms. The rights and obligations in this section remain in effect during the period any ICA Programs are licensed to Customer and for two years thereafter.

Customer will not (i) Circumvent or attempt to Circumvent any Technological Measures in an IBM Product or use a third party or third party product to do so, or (ii) in any way access, use, or attempt to access or use, Unauthorized Built-in Capacity.

1.10 General Principles of Our Relationship

1.10.1 Notices and Communications

Written communications, including notices to the receiving party's designated representative, are to be sent to the address (physical, e-mail or facsimile) specified in an applicable Attachment or Transaction Document. The parties consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with our business relationship arising out of this Agreement, and such communications are acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.

1.10.2 Assignment and Resale

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to assign without consent is void. The assignment of this Agreement, in whole or in part, within the Enterprise of which either party is a part or to a successor organization by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments without obtaining Customer's consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.

Customer agrees to acquire each Machine with the intent to use it as designed and in the form it was sold within Customer's Enterprise and not for reselling, leasing, or transferring it, in whole or in part, to a third party, unless either of the following applies: a) Customer is arranging lease-back financing for the

Machine; or b) Customer has paid IBM's list price or reference price, as applicable for the Machine, and does not remarket it in competition with IBM or IBM's authorized remarketers.

1.10.3 Compliance with Laws

IBM will comply with laws applicable to IBM generally as a provider of information technology Products and services. IBM is not responsible for determining the requirements of laws applicable to Customer's business, including those relating to Products that Customer acquires under this Agreement, or that IBM's provision of or Customer's receipt of particular Products under this Agreement meets the requirements of such laws. Neither party is obligated to take any action that would violate applicable law.

Each party will comply with all applicable export and import laws, regulations, and associated embargo and sanction regulations, including prohibitions on export for certain end uses or to certain end users.

1.10.4 Dispute Resolution

Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, i) neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose; and ii) after such time limit, any legal action arising out of this Agreement or any transaction under it and all respective rights related to any such action lapse.

1.10.5 Other Principles of Our Relationship

- a. Neither party grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
- b. The exchange of any confidential information will be made under a separate, signed confidentiality agreement. However, to the extent confidential information is exchanged in connection with any Product under this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.
- c. This Agreement and any transaction under it do not create an agency, joint venture, or partnership between Customer and IBM. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.
- d. Each party grants only the licenses and rights specified in this Agreement. No other licenses or rights (including licenses or rights under patents) are granted either directly, by implication, or otherwise. The rights and licenses granted to Customer under this Agreement may be terminated if Customer fails to fulfill its applicable payment obligations.
- e. Customer agrees that IBM may process the business contact information of Customer's employees and contractors and information about Customer as a legal entity (contact information) in connection with IBM Products and services or in furtherance of IBM's business relationship with Customer. This contact information can be stored, disclosed internally and processed by International Business Machines Corporation and its subsidiaries, Business Partners and subcontractors wherever they do business, solely for the purpose described above provided that these companies comply with applicable data privacy laws related to this processing. Where required by applicable law, Customer has notified and obtained the consent of the individuals whose contact information may be stored, disclosed internally and processed and will forward their requests to access, update, correct or delete their contact information to IBM who will then comply with those requests.
- f. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against Customer except as described in the Intellectual Property Protection section above or as permitted by the Limitation of Liability section above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.
- g. Customer is responsible for selecting the Products that meet its needs and for the results obtained from the use of the Products, including Customer's decision to implement any recommendation concerning Customer's business practices and operations.
- h. Where approval, acceptance, consent or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.

- i. Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.
- j. As reasonably required by IBM to fulfill its obligations under this Agreement, Customer agrees to provide IBM with sufficient and safe access (including remote access) to Customer's facilities, systems, information, personnel, and resources, all at no charge to IBM. IBM is not responsible for any delay in performing or failure to perform caused by Customer's delay in providing such access or performing other Customer responsibilities under this Agreement.

1.11 Agreement Termination

Either party may terminate this Agreement on written notice to the other following the expiration or termination of the terminating party's obligations under this Agreement, including any applicable Attachment or Transaction Document.

Either party may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply.

Any terms of this Agreement that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

1.12 Geographic Scope and Governing Law

The rights, duties, and obligations of each party are valid only in the United States except that all licenses are valid as specifically granted.

Both parties agree to the application of the laws of the State of New York to govern, interpret, and enforce all of Customer's and IBM's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

2. The IBM Warranties

2.1 Warranty for IBM Machines

IBM warrants that each IBM Machine is free from defects in materials and workmanship and conforms to its Specifications.

The warranty period for an IBM Machine is a fixed period, specified in a Transaction Document. For Machines, unless otherwise specified, the Date of Installation is the Warranty Start Date.

2.1.1 Warranty Service for IBM Machines

During the warranty period, IBM provides repair and exchange warranty service for the IBM Machine, without charge, under the type of service IBM designates for the IBM Machine. If an IBM Machine does not function as warranted during the warranty period and IBM is unable to either i) make it do so or ii) replace it with one that is at least functionally equivalent, Customer may return it to IBM for a refund.

At its discretion, IBM will i) either repair or exchange the failing Machine and ii) provide the warranty service either at Customer's location or a service center.

Any feature, conversion, or Machine Upgrades must be installed on a Machine which is i) the designated, serial-numbered Machine, if applicable, and ii) at an Engineering-Change level compatible with the feature, conversion, or Machine Upgrade.

If Customer is making available to IBM any facilities, software, hardware or other resources in connection with IBM's performance of warranty services, Customer agrees to obtain any licenses or approvals related to these resources that may be necessary for IBM to perform the warranty services. IBM will be relieved of its obligations that are adversely affected by Customer's failure to promptly obtain such licenses or approvals. Unless otherwise agreed in an Attachment or Transaction Document, Customer is responsible for i) any data and the content of any database Customer makes available to IBM in connection with warranty services under this Agreement, ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and iii) backup and recovery of the database and any stored data. IBM has no responsibilities regarding such data or database, including any confidentiality and security obligations, under this Agreement.

When the type of warranty service requires that Customer deliver the failing Machine to IBM, Customer agrees to ship it suitably packaged (prepaid unless IBM specifies otherwise) to a location IBM designates. After IBM has repaired or exchanged the Machine, IBM will deliver it to Customer at IBM's expense unless IBM specifies otherwise. IBM is responsible for loss of, or damage to, Customer's Machine while it is i) in IBM's possession or ii) in transit in those cases where IBM is responsible for the transportation charges.

Customer agrees:

- a. to obtain authorization from the owner to have IBM service a Machine that Customer does not own;
- b. where applicable, before IBM provides warranty service, to --
 - (1) follow the problem determination and service request procedures that IBM provides,
 - (2) secure all programs, data, and funds contained in a Machine, and
 - (3) inform IBM of changes in a Machine's location.
- c. to follow the service instructions that IBM provides (which may include installing Machine Code and other software updates either downloaded from an IBM Internet Web site or copied from other electronic media); and
- d. when Customer returns a Machine to IBM for any reason --
 - (1) to securely erase from any Machine all programs not provided by IBM with the Machine and data, including without limitation, the following: i) information about identified or identifiable individuals or legal entities ("Personal Data") and ii) Customer's confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, Customer agrees to transform such information (e.g., by making it anonymous) so that it no longer qualifies as Personal Data under applicable law;
 - (2) to remove all funds from Machines returned to IBM. IBM is not responsible for any funds, programs not provided by IBM with the Machine, or data contained in a Machine that Customer returns to IBM; and
 - (3) IBM may ship all or part of the Machine or its software to other IBM or third party locations around the world to perform its responsibilities under this Agreement, and Customer authorizes IBM to do so.

2.1.2 Warranty Service Items not Covered

Repair and exchange warranty services do not cover:

- a. accessories, supply items, consumables (such as batteries and printer cartridges), and structural parts (such as frames and covers);
- b. Machines damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by Customer or a third party;
- c. Machines with removed or altered Machine or parts identification labels;
- d. failures caused by a product for which IBM is not responsible;
- e. service of Machine alterations; or
- f. service of a Machine on which Customer is using capacity or capability, other than that authorized by IBM in writing.

2.1.3 Replacements

When warranty service involves the exchange of a part or Machine, the item IBM replaces becomes IBM's property and the replacement becomes Customer's. Customer represents that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty service status of the replaced item. Before IBM exchanges a part or Machine, Customer agrees to remove all features, parts, options, alterations, and attachments not under IBM's service. Customer also agrees to i) ensure that the part or Machine is free of any legal obligations or restrictions that prevent its exchange and ii) transfer ownership and possession of removed parts to IBM.

Service for some IBM Machines involves IBM providing Customer with an exchange replacement for installation by Customer. Such exchange replacements may be i) a part of a Machine (called a Customer Replaceable Unit, or "CRU," e.g., keyboard, memory, or hard disk drive), or ii) an entire Machine.

Customer may request IBM to install the replacement CRU or Machine, however, Customer may be charged for the installation. IBM provides information and replacement instructions with Customer's Machine and at any time on Customer's request. IBM specifies in the materials shipped with a replacement whether the failing CRU or Machine must be returned to IBM. When return is required, return instructions and a container are shipped with the replacement, and Customer may be charged for the replacement if IBM does not receive the failing CRU or Machine within 15 calendar days of Customer's receipt of the replacement.

2.1.4 Warranty Service Upgrade

For certain Machines, Customer may select a service upgrade from the standard type of warranty service for the Machine. IBM charges for the service upgrade during the warranty period.

Customer may not terminate the service upgrade or transfer it to another Machine during the warranty period.

2.2 Warranty for ICA Programs

IBM warrants that each warranted ICA Program, when used in the Specified Operating Environment, will conform to its Specifications.

During the warranty period, IBM provides Program Services without charge. The warranty period for an ICA Program expires when its Program Services are no longer available.

If an ICA Program does not function as warranted during the first year after Customer obtains its license and IBM is unable to make it do so, Customer may return the ICA Program and the charges Customer paid for the license will be refunded. To be eligible, Customer must have obtained its license while Program Services (regardless of the remaining duration) were available for the ICA Program. Additional terms regarding Program Services are contained in Part 5.

2.3 Warranty for Systems

When IBM specifies in an Attachment or Transaction Document that IBM is providing Products to Customer that are intended to operate together as a system, IBM warrants that those Products are compatible and, when installed in accordance with their Specifications, will operate with one another. This warranty is in addition to IBM's other applicable warranties.

2.4 Extent of Warranty

If a Machine is subject to federal or state consumer warranty laws, IBM's statement of limited warranty included with the Machine applies in place of these Machine warranties. The warranties stated above will not apply to the extent that there has been misuse (including, but not limited to, use of any Unauthorized Built-in Capacity or Circumvention of Technological Measures), accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by Customer or a third party, or failure or damage caused by a product for which IBM is not responsible. The warranty for IBM Machines is voided by removal or alteration of Machine or parts identification labels.

For a Machine that IBM is responsible to install, if Customer elects to install the Machine itself or have a third party install the Machine, IBM may inspect the Machine at Customer's expense before providing warranty service on the Machine. If the Machine is not in an acceptable condition for warranty service, as solely determined by IBM, Customer may request that IBM restore it to an acceptable condition for service or Customer may withdraw its request for warranty service. IBM, at its sole discretion, will determine if restoration is possible. Restoration is provided as a billable service.

THESE WARRANTIES ARE CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

Items Not Covered by Warranty

IBM does not warrant uninterrupted or error-free operation of a Product or that IBM will correct all defects. IBM will identify IBM Machines and ICA Programs that it does not warrant.

IBM's Warranty for ICA Programs does not extend to an ICA Program that is run or executed on other than a Designated Machine.

Unless otherwise specified in an Attachment or Transaction Document, IBM provides non-IBM Products (including those provided with, or installed on, an IBM Machine at Customer's request) **WITHOUT WARRANTIES OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to Customer. Warranties, if any, for Other IBM Programs and Non-IBM Programs may be found in their license agreements.

3. Machines Terms

3.1 Production Status

Each IBM Machine is manufactured from parts that may or may not be new. In some cases, a Machine may not be new and may have been previously installed. Regardless, IBM's applicable warranty terms described in Part 2 apply.

3.2 Title and Risk of Loss

When IBM accepts Customer's order, IBM agrees to sell Customer the Machine described in a Transaction Document. IBM transfers title to Customer or, if applicable, Customer's lessor when the Machine is shipped to Customer or Customer's designated location. However, IBM reserves a purchase money security interest in the Machine until IBM receives the amounts due. For a feature, conversion, or Machine Upgrade involving the removal of parts which become IBM's property, IBM reserves a security interest until IBM receives payment of all the amounts due and the removed parts. Customer authorizes IBM to file appropriate documents to permit IBM to perfect its security interest.

For each Machine, IBM bears the risk of loss or damage up to the time it is delivered to the IBM-designated carrier for shipment to Customer or Customer's designated location. Thereafter, Customer assumes the risk. Each Machine will be covered by insurance, arranged and paid for by IBM for Customer, covering the period until it is delivered to Customer or Customer's designated location. For any loss or damage, Customer must i) report the loss or damage in writing to IBM within 10 business days of delivery and ii) follow the applicable claim procedure.

3.3 Machine Installation

Customer agrees to provide an environment meeting the requirements for the Machine as specified in its published documentation.

Within 30 calendar days of the shipment of a Machine, Customer agrees to install the Machine or, if IBM is responsible for the installation, to allow IBM to install the Machine. IBM has standard installation procedures. IBM will successfully complete these procedures before it considers an IBM Machine (other than a Machine for which Customer defers installation or a Customer-set-up Machine) installed. For a Machine that IBM is responsible to install, if the Machine is not made available for IBM to install within six months from shipment, installation will be subject to an installation charge.

Customer is responsible for installing a Customer-set-up Machine and a non-IBM Machine according to instructions provided by IBM or the Machine's manufacturer.

3.4 Installation of Machine Upgrades and Engineering Changes

IBM sells Machine Upgrades for installation on Machines, and, in certain instances, only for installation on a designated, serial-numbered Machine. Within 30 calendar days of the shipment of a Machine Upgrade, Customer agrees to install the Machine Upgrade or, if IBM is responsible for the installation, to allow IBM to install the Machine Upgrade. Certain Machine Upgrade orders may be terminated at IBM's discretion if not made available for IBM to install within 30 calendar days of shipment, in which case Customer must return the Machine Upgrade to IBM at Customer's expense. In all cases, if the Machine Upgrade is not made available for IBM to install within six months from the date IBM ships the Machine Upgrade, installation will be subject to an installation charge.

Customer agrees to allow IBM to install mandatory Engineering Changes (such as those required for safety) on a Machine within 30 calendar days of IBM's notice to Customer unless otherwise agreed to by the parties.

Many Machine Upgrades and Engineering Changes require the removal of parts and the transfer of ownership and possession of the removed parts to IBM. Customer is responsible for the return of all removed parts to IBM upon installation of the Machine Upgrade or Engineering Change. As applicable, Customer represents that Customer has permission from the owner and any lien holders to i) install Machine Upgrades and Engineering Changes and ii) transfer ownership and possession of removed parts to IBM. Customer further represents that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part will assume the warranty status of the replaced part.

4. Licenses for Machine Code and Other Internal Licensed Code

Customer acknowledges that each Covered Machine contains Machine Code and may also contain Other Internal Licensed Code. Regardless of the source from which Customer acquires an IBM Machine, IBM's license terms regarding Machine Code and Other Internal Licensed Code included with the Machine apply.

Customer's use of Machine Code on a Covered Machine is governed by the terms of the applicable IBM License Agreement for Machine Code provided at http://www.ibm.com/systems/support/machine_warranties/machine_code.html

OILC is licensed under, and Customer's use is governed by, the terms of the applicable license agreement(s) for such OILC provided at:

http://www.ibm.com/servers/support/machine_warranties/support_by_product.html

5. License for ICA Programs

5.1 License

When IBM accepts Customer's order, IBM grants Customer a nonexclusive license to use the ICA Program only within Customer's Enterprise in the United States. ICA Programs are owned by International Business Machines Corporation, one of its subsidiaries, or a third party and are copyrighted and licensed (not sold).

5.1.1 Authorized Use

Under each license, IBM authorizes Customer to:

- a. run or execute the ICA Program only on the Designated Machine specified by the Customer to IBM under the terms of Section 5.1.2 below;
- b. use the ICA Program to the extent of authorizations Customer has obtained;
- c. solely in support of the level of use authorized by IBM, make and install copies of the ICA Program on the following: (i) the Designated Machine, and (ii) on an additional Designated Machine, for backup purposes, if the ICA Program is not performing productive work (including, without limitation, production, development, test, program maintenance, mirroring, etc.) on such additional Designated Machine; provided that Customer reproduces the copyright notices and any other legends of ownership on each copy or partial copy; and
- d. use any portion of the ICA Program IBM i) provides in source form, or ii) marks restricted (for example, marked "Restricted Materials of IBM") only to:
 - (1) resolve problems related to the use of the ICA Program; and
 - (2) modify the ICA Program so that, while not otherwise violating the terms of this Agreement, it will work together with other products.

5.1.2 Customer's Additional Obligations

For each ICA Program, Customer agrees to:

- a. provide its IBM representative with the type/model and serial number of the Designated Machine, and provide advance written notice and the effective date of any change from one Designated Machine to another Designated Machine;
- b. comply with any additional or different terms in its Licensed Program Specifications or another Attachment or Transaction Document;
- c. ensure that anyone who uses it (accessed either locally or remotely) does so only for Customer's authorized use and complies with IBM's terms regarding ICA Programs; and
- d. maintain a record of all copies and provide it to IBM at its request.

5.1.3 Actions Customer May Not Take

For each ICA Program, Customer agrees not to:

- a. reverse assemble, reverse compile, otherwise translate, or reverse engineer the ICA Program unless expressly permitted by applicable law without the possibility of contractual waiver; or
- b. sublicense, assign, rent, or lease the ICA Program or transfer it outside Customer's Enterprise.

5.2 Distributed System License Option

For some ICA Programs, Customer may make a copy under a Distributed System License Option (called a "DSLO" copy). IBM charges less for a DSLO copy than for the original license (called the "Basic" license). In return for the lesser charge, Customer agrees to do the following while licensed under a DSLO:

- a. have a Basic license for the ICA Program;
- b. provide problem documentation and receive Program Services (if any) only through the location of the Basic license; and
- c. distribute to, and install on, the DSLO's Designated Machine, any release, correction, or bypass that IBM provides for the Basic license.

5.3 Program Services

If IBM can reproduce Customer's reported problem in the Specified Operating Environment, IBM will issue defect correction information, a restriction, or a bypass. IBM provides Program Services i) on an on-going basis (with at least six months' written notice before IBM terminates Program Services), ii) until the date IBM specifies, or iii) for a period IBM specifies. Consult the IBM Software Support Handbook for further details: <http://www14.software.ibm.com/webapp/set2/sasff/handbook/home.html>

5.4 License Termination

Customer may terminate the license for an ICA Program at any time on one month's written notice to IBM. IBM may terminate Customer's license for an ICA Program if Customer fails to comply with:

- a. the terms of this Section 5,
- b. the license terms for Machine Code applicable to the Designated Machine to which the ICA Program is licensed, or
- c. Section 1.8 of this Agreement as such Section pertains to the ICA Program or the Designated Machine to which the ICA Program is licensed.

For each ICA Program license that Customer acquired for a one-time charge, a replacement license may be acquired for an upgrade charge, if available. When Customer obtains a license for such replacement ICA Program, the license of the replaced ICA Program is terminated when charges become due, unless IBM specifies otherwise.

If an ICA Program's license is terminated, Customer's authorization to use the ICA Program is also terminated. Customer agrees to promptly destroy all copies of the Program after either party has terminated the license.

Any terms that by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees of the parties.

6. Definitions

Authorized Built-in Capacity -- the Built-in Capacity for a Covered Machine that was Properly Acquired and Activated and is used in accordance with the AUT. For purposes of this definition, "Activated" means when IBM causes, directly or indirectly, the Authorized Built-in Capacity to be made available for Customer's use on a Covered Machine and "Properly Acquired" means lawfully acquired from IBM (or an authorized IBM reseller) for the agreed consideration.

Authorized Use Table (AUT) -- the "IBM Authorized Use Table for Machines" that is provided at the following address: www.ibm.com/systems/support/machine_warranties/machine_code/aut.html and is in effect for a Covered Machine as of the acquisition date of the Covered Machine or, if there are one or more Machine Upgrades on the Covered Machine, then as of the acquisition date of the most recently acquired Machine Upgrade. The AUT is incorporated by reference into this Agreement.

Built-in Capacity -- the type and quantity of all resources and capabilities that IBM provides for a Machine, the access or use of which IBM has the ability to restrict by contract or Technological Measures. Built-In Capacity includes, without limitation, the type and quantity of the following: 1) processors, cores, processing capacity, processor performance setting and interactive processing capacity and capabilities; 2) memory; 3) storage; 4) cryptographic capability; 5) input/output ports, and 6) workload-specific resources and capabilities (including, for example, System z mainframe specialty processors such as zIIPs, zAAPs and IFLs, and other limited purpose products (including "appliances"). Built-in Capacity is either Authorized Built-in Capacity or Unauthorized Built-in Capacity.

Circumvent -- to, directly or indirectly, by or through any means, alter, avoid, disrupt, subvert, go around, or otherwise interfere with.

Covered Machine -- the specific Machine (as identified by serial number or order number on a Transaction Document or other similar contract document issued by IBM) for which use of Machine Code is licensed. A Covered Machine that receives a Machine Upgrade remains a Covered Machine and a Machine that receives a Machine Upgrade becomes a Covered Machine.

Customer-set-up Machine -- an IBM Machine that Customer is responsible for installing according to instructions provided with it.

Date of Installation --

- a. for an IBM Machine that IBM is responsible for installing, the business day after the day IBM installs it or, if Customer defers installation, makes it available to Customer for subsequent installation by IBM;
- b. for a Customer-set-up Machine and a non-IBM Machine, the second business day after the Machine's standard transit allowance period; and
- c. for a Program --
 - (1) basic license, the second business day after the Program's standard transit allowance period,
 - (2) copy, the date (specified in a Transaction Document) on which IBM authorizes Customer to make a copy of the Program, and
 - (3) chargeable component (also called a feature), the date Customer uses the chargeable component or a copy. Customer agrees to notify IBM of the chargeable component's Date of Installation.

Designated Machine -- a Machine of a type specified in the Mainframe Exhibits provided at the following address: <http://www.ibm.com/systems/z/resources/swprice/reference/exhibits/hardware.html>

Engineering Change -- an update to modify certain aspects of the design of an installed Machine, including without limitation the design of a certain Machine part or Machine Code.

Enterprise -- any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. The term "Enterprise" applies only to the portion of the Enterprise located in the United States.

IBM Machine -- a Machine bearing an IBM logo.

IBM Product -- an IBM Machine, ICA Program, or Other IBM Program.

ICA Program -- an IBM Program licensed under this Agreement or the IBM Customer Agreement.

Licensed Internal Code (called "LIC") -- another term for Machine Code commonly used for certain IBM product lines, such as for IBM System z Machines. LIC and Machine Code are interchangeable terms that have the same meaning.

Machine -- a hardware device, including its resources, capabilities, features, conversions, Machine Upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment).

Machine Code -- all of the following: (i) all code provided for an IBM Machine (including, without limitation, a Machine's firmware and microcode), excluding code that is licensed under a license agreement other than the license agreement governing use of Machine Code (for example, IBM operating system and middleware products); and (ii) records, data, and structures created, used or relied on by the code in item (i) (for example, IBM System z Machine LIC configuration control records and passwords that help restrict access or use of the code in item (i)). The term Machine Code specifically includes any whole or partial copy of Machine Code, and any fix, patch, or replacement provided for Machine Code.

Machine Upgrade -- the following changes that IBM sells for installation on a Machine: a hardware or Machine Code change to modify, add, remove, enable or disable certain Built-in Capacity or other resources and capabilities. Each such change can be accomplished through a Machine conversion, or through the conversion, addition, removal, or exchange of a Machine's feature(s).

Non-IBM Program -- a Program licensed under a separate third party license agreement.

Other IBM Program -- an IBM Program licensed under a separate IBM license agreement (e.g., IBM International Program License Agreement).

Other Internal Licensed Code – code for a Covered Machine that is separately provided by IBM and licensed by a third party.

Product – a Machine or a Program.

Program – the following, including the original, any portion thereof, and all whole or partial copies:

- a. one or more sequences of instructions suitable for processing by a computer;
- b. control data (such as control blocks, event logs, configuration files) defined within or generated by the execution of such sequence(s) of instructions. Control data includes without limitation data that is designed to (i) manage or limit the operation of programs, or (ii) help monitor, record, manage, or limit the consumption of software or hardware resources, including, without limitation, data used in IBM's implementation of Technological Measures;
- c. components;
- d. audio-visual content (such as images, text, recordings, or pictures) defined within or generated by the execution of, such sequence(s) of instructions; and
- e. related licensed materials such as publications and other documentation.

The term "Program" includes any ICA Program, Other IBM Program, or Non-IBM Program, and any fix, patch or replacement that IBM may provide for a Program. The term does not include Machine Code.

Program Services – defect correction information, restrictions, or bypasses that IBM provides for the unmodified portion of the current release of a warranted ICA Program for at least one year following its general availability.

Specifications – information specific to a Product. IBM Machine Specifications are in a document entitled "Official Published Specifications." ICA Program Specifications are in a document entitled "Licensed Program Specifications."

Specified Operating Environment – the Machines and Programs with which an ICA Program is designed to operate, as described in its Licensed Program Specifications.

Technological Measures – all means, methods, systems, processes, checks, tests, monitoring, validations, instruments, and other measures that IBM implements for the purpose of: (i) protecting, controlling, limiting, and restricting the use of Machine Code; (ii) protecting, controlling, limiting, and restricting the access to or use of Built-in Capacity (including, for clarity, both Unauthorized Built-in Capacity and Authorized Built-in Capacity); and (iii) monitoring and reporting use of the Machine Code, Authorized Built-in Capacity, and Unauthorized Built-In Capacity, including for the purpose of calculating usage-based charges for IBM Products. Without limiting the generality of the preceding sentence, Technological Measures may be implemented, in whole or in part, in Machine Code, IBM Programs, other code, other IBM technology, and in the data created, used or relied upon by such Machine Code, IBM Programs, other code, and IBM technology.

Unauthorized Built-in Capacity – all Built-in Capacity for a Covered Machine other than Authorized Built-in Capacity. For example (but without limitation) and for the avoidance of any doubt, each of the following is Unauthorized Built-In Capacity: (i) in the case of a processor authorized to operate at less than its full processor performance setting, the capability to operate the processor at a greater processor performance setting, and (ii) in the case of a System z Machine specialty processor, the capability to use the specialty processor for anything other than the "Authorized Uses" as such term is defined in the AUT.

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:	<u><i>Andy Harmond</i></u>
Printed Name:	<u>Andy Harmond</u>
Organization:	<u>International Business Machines Corp.</u>
Date:	<u>11/11/2013</u>

**EXHIBIT X STATEMENT OF WORK (SOW) TEMPLATE
BETWEEN (NAME OF AUTHORIZED USER) AND (SUPPLIER NAME)**

ISSUED UNDER

**CONTRACT NUMBER VA-XXXXXX-XXX
BETWEEN
VIRGINIA INFORMATION TECHNOLOGIES AGENCY
AND
[SUPPLIER NAME]**

Exhibit X, between (Name of Agency/Institution) and (Supplier Name) (“Supplier”) is hereby incorporated into and made an integral part of Contract Number VA-XXXXXX-XXX (“Contract”) between the Virginia Information Technologies Agency (“VITA”) on behalf of the Commonwealth of Virginia (and [Supplier]. In the event of any discrepancy between this Exhibit X and the Contract, the provisions of the Contract shall control.

*[Note to Template Users: Instructions for using this template to draft a Statement of Work are in gray highlight and **italics**. These instructions should be deleted after the appropriate text has been added to the Statement of Work. Contractual language is **not italicized** and should remain in the document. Text that is highlighted in blue is variable based on the nature of the project.]*

STATEMENT OF WORK

This Statement of Work (SOW) is issued by the (Name of Agency/Institution), hereinafter referred to as “Authorized User” under the provisions of the Contract,. The objective of the project described in this SOW is for the Supplier to provide the Authorized User with a Solution (“Solution”) or Services (“Services”) or Software (“Software”) or Hardware and Maintenance or Licensed Application Services” for Authorized User Project Name. *(Customize the last sentence to state what you are getting from the Supplier, based on the VITA Contract language, and with your project name.)*

1. PERIOD OF PERFORMANCE

The work authorized in this SOW will occur within XX (XX) months of execution of this Statement of Work. This includes delivery, installation, implementation, integration, testing and acceptance all of products and services necessary to implement the Authorized User’s Solution, training, and any support, other than on-going maintenance services. The period of performance for maintenance services shall be one (1) year after implementation or end of Warranty Period and may be extended for additional one (1) year periods, pursuant to and unless otherwise specified in the Contract. *(Customize this section to match what you are getting from the Supplier, based on the allowable scope of the VITA Contract and your project’s specific needs within that allowable scope.)*

2. PLACE OF PERFORMANCE

(Assign performance locations to major milestones or any other project granularity, depending on your transparency and governance needs, if needed.)

Tasks associated with this project will be performed at the Authorized User’s location(s) in City/State, at Supplier’s location(s) in City/State, or other locations as required by the effort.

3. PROJECT DEFINITIONS

Provide project unique definitions so that all stakeholders have the same understanding. Ensure these do not conflict with the Contract definition.)

All definitions of the Contract shall apply to and take precedence over this SOW. Authorized User’s specific project definitions are listed below:

4. PROJECT SCOPE

(Provide a description of the scope of your project and carve out what is NOT in the scope of your project. Remember that it must fit within the VITA Contract scope.)

A. General Description of the Project Scope

B. Project Boundaries

5. AUTHORIZED USER'S SPECIFIC REQUIREMENTS

(Provide information about your project's and your agency's specific requirements for this particular project including, but not limited to the following subsections):

A. Authorized User-Specific Requirements

B. Special Considerations for Implementing Technology at Authorized User's Location(s)

C. Other Project Characteristics to Insure Success

6. CURRENT SITUATION

(Provide enough background information to clearly state the current situation to Supplier so that Supplier cannot come back during performance claiming any unknowns or surprises. Some example subsections are provided below. You may collapse/expand as you feel is necessary to provide adequate information and detail.)

A. Background of Authorized User's Business Situation

B. Current Architecture and Operating System

C. Current Work Flow/Business Flow and Processes

D. Current Legacy Systems

E. Current System Dependencies

F. Current Infrastructure (Limitations, Restrictions)

G. Usage/Audience Information

7. PRODUCTS AND SERVICES TO SUPPORT THE PROJECT REQUIREMENTS (AND/OR SOLUTION)

A. Required Products (or Solution Components)

(List the products, or if your project is for a Solution, the Solution components, (hardware, software, etc.) provided by Supplier that will be used to support your project requirements. Identify any special configuration requirements, and describe the system infrastructure to be provided by the Authorized User. Provide an overview that reflects how the system will be deployed within the Authorized User's environment. You are urged to refer to the VITA Contract for allowable scope and other guidance in drafting language for this section.)

B. Required Services

(List the services (e.g., requirements development, Solution design, configuration, interface design, data conversion, installation, implementation, testing, training, risk assessment, performance assessment, support and maintenance) that will be provided by Supplier in the performance of your project. You are urged to refer to the VITA Contract for the definition of Services and for the allowable scope in drafting language for this section. You will notice subsections "C" and "D" below offer areas for expanded detail on training, support and maintenance services. You may add other subsections in which you wish to expand the information/details/requirements for other service areas as well. It is likely some of this detail will be a combination of your known needs and the Supplier's proposal. In all cases the provisions should include all negotiated commitments by both parties, even if you reference by incorporation the Supplier's proposal in any subsection.)

C. Training Requirements and/or Authorized User Self-Sufficiency/Knowledge Transfer

(Provide an overview and details of training services to be provided for your project and any special requirements for specific knowledge transfer to support successful implementation of the Solution. If the intent is for the Authorized User to become self-sufficient in operating or maintaining the Solution, determine the type of training necessary, and develop a training plan, for such user self-sufficiency. Describe how the Supplier will complete knowledge transfer in the event this Statement of Work is not completed due to actions of Supplier or the non-appropriation of funds for completion affecting the Authorized User. You may refer to the VITA Contract for guidance on the allowable scope for this.)

D. Support and Maintenance Requirements

(Document the level of support, as available under the Contract, required by your project to operate and maintain the Solution. This may include conversion support, legacy system integration, transition assistance, Solution maintenance (including maintenance level), or other specialized consulting to facilitate delivery or use of the Solution.)

E. Personnel Requirements

(Provide any supplier personnel qualifications, requirements, licenses, certifications or restrictions including project manager, key personnel, subcontractors, etc., but ensure they do not conflict with the VITA Contract terms.)

F. Transition Phase-In/Phase-Out Requirements

(Describe any specific requirements for orientation or phasing in and/or phasing out of the project with the Supplier. Be specific on what the project needs and expected results are, the duration and other pertinent detail, but ensure they do not conflict with the VITA Contract provision(s) regarding Transition of Services or with any other training requirements in the SOW.)

8. TOTAL PROJECT PRICE

The total Fixed Price for this Project shall not exceed \$US XXX.

Supplier's invoices shall show retainage of ten percent (10%). Following completion of Solution implementation, Supplier shall submit a final invoice to the Authorized User, for the final milestone payment amount shown in the table in section 9 below, plus the total amount retained by the Authorized User. If travel expenses are not included in the fixed price of the Solution, such expenses shall be reimbursed in accordance with Commonwealth of Virginia travel policies as published by the Virginia Department of Accounts (<http://www.doa.virginia.gov>). In order to be reimbursed for travel expenses, Supplier must submit an estimate of such expenses to Authorized User for approval prior to incurring such expenses.

(Sections 9 through 11 should be used or deleted depending on the project's complexity, risk and need for governance. For a simple project you may only need the section 10 table, but for a more complex project, or a major IT project, you may need a combination of or all of the tables for check and balance and redundancy.)

9. PROJECT DELIVERABLES

(Provide a list of Supplier's deliverable expectations. The table is to be customized for the Authorized User's project. You may want to categorize deliverables for each phase or major milestone of the project and then categorize other interim deliverables and/or performance and status reports under one of them or under an Administrative or Project Management section.)

The following deliverables are to be provided by Supplier under this SOW. Subsequent sections may include further detail on the content requirements for some deliverables.

No.	Title	Due Date	Format Required (i.e., electronic/hard)	Distribution Recipients	Review Complete	Final Due Date
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			copy/CD/DVD		Due Date	
	Project Plan					
	Design Plan					
	Implementation Plan					
	Data Conversion Plan					
	Risk Assessment Plan					
	Test Plan					
	Training Plan					
	Performance Plan					
	Contingency Plan					
	Disaster Recovery Plan					
	Cutover Plan					
	Change Management Plan					
	Transition Plan					
	Monthly Status Reports					
	Quarterly Performance /SLA Reports					
	Training Manual					
	Final Solution Submission Letter					
	Final Acceptance Letter					

10. MILESTONES, DELIVERABLES, PAYMENT SCHEDULE, AND HOLDBACKS

(This table should include the project's milestone events, associated deliverables, when due, milestone payments, any retainage amount to be held until final acceptance and the net payment you promise to pay for each completed and accepted milestone event. This table includes sample data only and must be customized for your project needs.)

The following table identifies milestone events and deliverables, the associated schedule, any associated payments, any retainage amounts, and net payments.

Milestone Event	Associated Milestone Deliverable(s)	Schedule	Payment	Retainage	Net Payment
Project kick-off meeting	---	Execution + 5 days	---	---	---
Site survey	Site survey report	Execution + 10 days	---	---	---
Requirements Analysis & Development	Design Plan	Execution+45 days	\$30,000	\$15,000	\$15,000
	Project Plan	Execution+45 days			
	Implementation	Execution + 45			

	Plan	days			
Begin Implementation		Execution + 60 days			
Data Conversion & Mapping		Execution + 90 days	\$10,000	\$3,000	\$7,000
Installation of software	---	Execution + 90 days	\$10,000	\$1,000	\$9,000
Installation of hardware	---	Execution + 90 days	\$10,000	\$1,000	\$9,000
Configuration and testing	---	Execution + 120 days	---	---	---
Training	Training manual	Execution + 130 days	\$10,000	\$1,000	\$9,000
30-Day User Acceptance Testing	---	Execution + 160 days	\$20,000	\$2,000	\$18,000
Implementation complete	Solution	Execution + 160 days	\$10,000	--	\$10,000
Final Acceptance		Execution + 210 days	--	--	\$23,000

11. EVENTS AND TASKS FOR EACH MILESTONE

(If needed, provide a table of detailed project events and tasks to be accomplished to deliver the required milestones and deliverables for the complete Solution. Reference each with the relevant milestone. A Work Breakdown Structure can be used as shown in the table below or at the very least a Project Plan should have this granularity. The Supplier's proposal should be tailored to the level of detail desired by the Authorized User's business owner/project manager for project governance.)

The following table identifies project milestone events and deliverables in a Work Breakdown Structure format.

WBS No.	Milestone	Milestone Event	Milestone Task	Interim Task Deliverables	Duration
1.0	Site survey				
1.1		Conduct interviews			
1.1.1			Schedule interviews	None	20 days after contract start
1.1.2			Complete interviews	Interview Results Report	25 days after contract start
1.2		Receive AU information			

12. ACCEPTANCE CRITERIA

(This section should reflect the mutually agreed upon UAT and Acceptance Criteria specific to this engagement. Please read the VITA contract definitions for the definitions or Requirements and Acceptance. Ensure the language in this section does not conflict with the VITA Contract language.)

Acceptance Criteria for this Solution will be based on a User Acceptance Test (UAT) designed by Supplier and accepted by the Authorized User. The UAT will ensure that all of the requirements and functionality required for the Solution have been successfully delivered. Supplier will provide the Authorized User with a detailed test plan and acceptance check list based on the mutually agreed upon UAT Plan. This UAT Plan check-list is incorporated into this SOW in Exhibit B-X.

Each deliverable created under this Statement of Work will be delivered to the Authorized User with a Deliverable Acceptance Receipt. This receipt will describe the deliverable and provide the Authorized User's Project Manager with space to indicate if the deliverable is accepted, rejected, or conditionally accepted. Conditionally Accepted deliverables will contain a list of deficiencies that need to be corrected in order for the deliverable to be accepted by the Project Manager. The Project Manager will have **ten (10)** days from receipt of the deliverable to provide Supplier with the signed Acceptance Receipt unless an alternative schedule is mutually agreed to between Supplier and the Authorized User in advance.

13. PROJECT ASSUMPTIONS AND PROJECT ROLES AND RESPONSIBILITIES

(This section contains areas to address project assumptions by both the Supplier and the Authorized User and to assign project-specific roles and responsibilities between the parties. Make sure that all assumptions are included to alleviate surprises during the project. Ensure that all primary and secondary (as needed) roles and responsibilities are included. You will tailor the Responsibility Matrix table below to fit your project's needs.)

A. Project Assumptions

The following assumptions are specific to this project:

B. Project Roles and Responsibilities

The following roles and responsibilities have been defined for this project:

(Sample Responsibility Matrix)

Responsibility Matrix	Supplier	Authorized User
Infrastructure – Preparing the system infrastructure that meets the recommended configuration defined in Section 2B herein		√
Server Hardware		√
Server Operating		√
Server Network Connectivity		√
Relational Database Management Software (Installation and Implementation)		√
Server Modules – Installation and Implementation	√	
PC Workstations – Hardware, Operating System, Network Connectivity		√
PC Workstations – Client Software		√
Application Installation on PC Workstations	√	
Wireless Network Access Points	√	
Cabling, Electric and User Network Connectivity from Access Points		√
Wireless Mobile Computing Products – Scanners, printers	√	
Project Planning and Management	√	√
Requirements Analysis	√	√
Application Design and Implementation	√	
Product Installation, Implementation and Testing	√	
Conversion Support	√	
Conversion Support -- Subject Matter Expertise		√
Documentation	√	
Training	√	
Product Maintenance and Support	√	

Problem Tracking	√	√
Troubleshooting – IT Infrastructure		√
Troubleshooting – Solution	√	

14. COMMONWEALTH AND SUPPLIER-FURNISHED MATERIALS, EQUIPMENT, FACILITIES AND PROPERTY

(In this section, provide details of any materials, equipment, facilities and property to be provided by your Agency or the Supplier in performance of this project. If none, so state so that the requirements are clear. If delivery of any of these is critical to the schedule, you may want to identify such delivery with hard due dates tied to “business days after project start” or “days after event/milestone.” Be sure to specify the delivery and point of contact information.)

A. PROVIDED BY THE COMMONWEALTH

B. PROVIDED BY THE SUPPLIER

15. SECURITY REQUIREMENTS

(Provide (or reference as an Attachment) Authorized User’s security requirements.)

For any individual Authorized User location, security procedures may include but not be limited to: background checks, records verification, photographing, and fingerprinting of Supplier’s employees or agents. Supplier may, at any time, be required to execute and complete, for each individual Supplier employee or agent, additional forms which may include non-disclosure agreements to be signed by Supplier’s employees or agents acknowledging that all Authorized User information with which such employees and agents come into contact while at the Authorized User site is confidential and proprietary. Any unauthorized release of proprietary information by the Supplier or an employee or agent of Supplier shall constitute a breach of the Contract.

Supplier shall comply with all requirements in the Security Compliance section of the Contract

16. REQUIRED STANDARDS, CERTIFICATIONS AND SPECIFICATIONS

In addition to any standards and specifications included in the Contract, Supplier shall follow the standards and specifications listed below during performance of this effort.

(List any specific Commonwealth, VITA, Federal, engineering, trade/industry or professional standards, certifications and specifications that Supplier is required to follow or possess in performing this work. The first bullet includes a link to COVA-required standards for all Commonwealth technology projects. The rest are examples only and highlighted to reflect this. If you need an exception of any COVA-required standard, please follow the process located at this link: <http://www.vita.virginia.gov/oversight/default.aspx?id=10344> and select the Data Standards Guidance bulleted link. Your AITR can assist you.

- COV ITRM Policies and Standards: <http://www.vita.virginia.gov/library/default.aspx?id=537>
- IEEE 802®
- HIPAA
- SAS 70 Type II

17. U.S. ENVIRONMENTAL PROTECTION AGENCY’S AND DEPARTMENT OF ENERGY’S ENERGY STAR GUIDELINES RISK MANAGEMENT

(Risk is a function of the probability of an event occurring and the impact of the negative effects if it does occur. Negative effects include schedule delay, increased costs, failure of dependent legacy system interoperability, other project dependencies that don’t align with this project’s schedule, and poor quality of deliverables. Depending on the level of risk of this project, as assessed by your Project

Manager and/or Steering Committee, this section may contain any or all of the following components, at a level of detail commensurate with the level of risk. Remember to add them to the Deliverables table.)

C. Initial Risk Assessment

Authorized User and Supplier shall each provide an initial assessment from their point of view.

D. Risk Management Strategy

(The list below is taken from VITA PMD template discussing what should go into a Risk Management Strategy. Don't forget to consider and plan for any budget contingencies to accommodate potential risks that are identified.)

1. **Risk Identification Process:** The processes for risk identification.
2. **Risk Evaluation and Prioritization:** How risks are evaluated and prioritized.
3. **Risk Mitigation Options:** Describe the risk mitigation options. They must be realistic and available to the project team.
4. **Risk Plan Maintenance:** Describe how the risk plan is maintained during the project lifecycle.
5. **Risk Management Responsibilities:** Identify all project team members with specific risk management responsibilities. (e.g., an individual responsible for updating the plan or an individual assigned as a manager).

E. Risk Management Plan

(Include a description of frequency and form of reviews, project team responsibilities, steering and oversight committee responsibilities and documentation. Be sure to add all deliverables associated with risk strategizing and planning to the list of Deliverables.)

18. DISASTER RECOVERY

Planning for disaster recovery for your project is paramount to ensure continuity of service. The criticalness and complexity of your project, including its workflow into other dependent systems of the Commonwealth or federal systems, will help you determine if you require a simple contingency plan or a full-blow contingency plan that follows the Commonwealth's ITRM Guideline SEC508-00 found at this link:

http://www.vita.virginia.gov/uploadedFiles/Library/ContingencyPlanningGuideline04_18_2007.pdf

It is advisable that you visit the link before making your decision on how you need to address contingency planning and related deliverables in this SOW; as well as, how this will impact your planned budget. A likely deliverable for this section would be a Continuity of Operations Plan. You may choose to include the above link in your final SOW to describe what the Plan will entail. The same link includes the following processes, which you may choose to list in your final requirements for this section, to be performed by your team, the Supplier or both and/or a steering committee if your project warrants such oversight and approval:

- Development of the IT components of the Continuity of Operations Plan (COOP)
- Development and exercise of the IT Disaster Recovery Plan (IT DRP) within the COOP
- Development and exercise of the IT System Backup and Restoration Plan

19. PERFORMANCE BOND

(If your project is sizeable, complex and/or critical, and the VITA Contract does not already provide for a performance bond, you may want the Supplier to provide one. The VITA Contract may include an Errors and Omissions insurance requirement, which would cover the Supplier's liability for any breach of the Contract or this SOW. Be sure to read the Contract for this information. However, if you feel that this project warrants further performance incentive due to the project or the Supplier's viability, you may include the following language in this section.)

The Supplier shall post performance bond in an amount equal to one hundred percent (100%) of the total contract value and provide a copy of the bond to Authorized user within (10) days of execution of this SOW Agreement. In the event that the Supplier or any subcontractor or any officer, director, employee or agent of the Supplier or any subcontractor or any parent or subsidiary corporation of the Supplier or any subcontractor fails to fully and faithfully perform each material requirement of this SOW Agreement, including without limitation the Supplier's obligation to indemnify the Authorized User, the performance bond shall be forfeited to Authorized User. The bond shall be in a form customarily used in the technology industry and shall be written by a surety authorized to do business in Virginia and that is acceptable to Authorized User.

20. OTHER TECHNICAL/FUNCTIONAL REQUIREMENTS

(Provide any other unique project technical and functional requirements and expectations in sufficient detail in this section. Ensure they do not conflict with existing requirements in the VITA Contract. Several examples are listed.)

A. Service Level Requirements

B. Mean-Time-Between-Failure Requirements

C. Data Access/Retrieval Requirements

D. Additional Warranties

21. REPORTING

(The following are examples of reporting requirements which may be included in your SOW depending on the project's need for governance. In an effort to help VITA monitor Supplier performance, it is strongly recommended that the SOW include "Supplier Performance Assessments". These assessments may be performed at the Project Manager's discretion and are not mandated by VITA.)

A. Weekly/Bi-weekly Status Update.

The weekly/bi-weekly status report, to be submitted by Supplier to the Authorized User, should include: accomplishments to date as compared to the project plan; any changes in tasks, resources or schedule with new target dates, if necessary; all open issues or questions regarding the project; action plan for addressing open issues or questions and potential impacts on the project; risk management reporting.

B. Supplier Performance Self-Assessment.

Within thirty (30) days of execution of the project start, the Supplier and the Authorized User will agree on Supplier performance self-assessment criteria. Supplier shall prepare a monthly self-assessment to report on such criteria. Supplier shall submit its self-assessment to the Authorized User who will have five (5) days to respond to Supplier with any comments. If the Authorized User agrees with Supplier's self-assessment, such Authorized User will sign the self-assessment and submit a copy to the VITA Supplier Relationship Manager.

C. Performance Auditing

(If you have included service level requirements in the above section entitled, Other Technical/Functional Requirements, you will want to include a requirement here for your ability to audit the results of the Supplier's fulfillment of all requirements, Likewise, you may want to include your validation audit of the Supplier's performance reporting under this Reporting section. It is important, however, that you read the VITA contract prior to developing this section's content so that conflicts are avoided. Suggested language is provided below, but must be customized for your project.)

Authorized User (or name of IV&V contractor, if there is one), will audit the results of Supplier's service level obligations and performance requirements on a monthly/quarterly basis, within ten (10) days of receipt of Supplier's self-assessments and service report(s). Any discrepancies will be discussed between the Authorized User and Supplier and any necessary invoice/payment adjustments will be made. If agreement cannot be reached, the Authorized User and Supplier will

escalate the matter in accordance with the Escalation provision of the Contract. (If none, you may add your escalation procedure in this section.)

D. Supplier Performance Assessments

(You may want to develop assessments of the Supplier's performance and disseminate such assessments to other Authorized Users of the VITA Contract. Prior to dissemination of such assessments, Supplier will have an opportunity to respond to the assessments, and independent verification of the assessment may be utilized in the case of disagreement.)

22. CHANGE MANAGEMENT

(Changes to the baseline SOW must be documented for proper project oversight. Depending on your project, you may need to manage and capture changes to configuration, incidents, deliverables, schedule, price or other factors your team designates as critical. Any price changes must be done in compliance with the Code of Virginia, § 2.2-4309. Modification of the contract, found at this link: <http://leg1.state.va.us/cgi-bin/legp504.exe?000+coh+2.2-4309+500825>. Changes to the scope of this SOW must stay within the boundaries of the scope of the VITA Contract.

For complex and/or major projects, it is recommended that you use the VITA PMD processes and templates located at: <http://www.vita.virginia.gov/oversight/projects/default.aspx?id=567>.

Administrative or non-technical/functional changes (deliverables, schedule, point of contact, reporting, etc.) should extrapolate the affected sections of this SOW in a "from/to" format and be placed in a numbered modification letter referencing this SOW and date, with a new effective date. The VITA Contract may include a template for your use or you may obtain one from the VITA Contract's Point of Contact. It is very important that changes do not conflict with, but do comply with, the VITA Contract, which takes precedence. The following language may be included in this section, but additional language is needed to list any technical/functional change management areas specific to this SOW; i.e., configuration, incident, work flow, or any others of a technical/functional nature.)

All changes to this SOW must comply with the Contract. Price changes must comply with the Code of Virginia, § 2.2-4309. Modification of the contract, found at this link: <http://leg1.state.va.us/cgi-bin/legp504.exe?000+coh+2.2-4309+500825>

All changes to this SOW shall be in written form and fully executed between the Authorized User's and the Supplier's authorized representatives. For administrative changes, the parties agree to use the change template, attached to this SOW. For technical/functional change management requirements, listed below, the parties agree to follow the processes and use the templates provided at this link: <http://www.vita.virginia.gov/oversight/projects/default.aspx?id=567>

23. POINT OF CONTACT

For the duration of this project, the following project managers shall serve as the points of contact for day-to-day communication:

Authorized User: _____

Supplier: _____

By signing below, both parties agree to the terms of this Exhibit.

Supplier:

Authorized User:

(Name of Supplier)

(Name of Agency/Institution)

By: _____

By: _____

(Signature)

(Signature)

Name: _____
(Print)

Title: _____

Date: _____

Name: _____
(Print)

Title: _____

Date: _____

EXHIBIT H

AWARDED MANUFACTURERS/CATEGORIES

- IBM
 - Server