



Commonwealth of Virginia  
Virginia Information Technologies Agency

**SATELLITE PHONES, RADIOS, BGAN PRODUCTS & SERVICES**

**OPTIONAL USE CONTRACT**

Date: July 30, 2015

Contract #: VA-150320-MACK

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.ciev.org/Our-Colleges/Profiles.aspx>.

Contractor: MacKay Communications, Inc.  
3691 Trust Drive  
Raleigh, NC 27616

FIN: 56-1550100

Contact Person: Robert Landtiser  
Phone: (919) 850-3038  
Email: [Robert.landtiser@mackaycomm.com](mailto:Robert.landtiser@mackaycomm.com)

Term: March 19, 2015 – March 28, 2018

Payment: Net 30 days

For Additional Information, Please Contact:

Technical Information:  
Supply Chain Management  
Virginia Information Technologies Agency  
John Tackley  
Phone: 804-416-6165  
E-Mail: [john.tackley@vita.virginia.gov](mailto:john.tackley@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>





# Invitation for Bid (IFB)

## SOLICITATION, OFFER AND AWARD

<b>IFB NUMBER</b> 2015-11 Amendment 1	<b>DATE ISSUED</b> 1/21/2015	<b>DATE DUE</b> 2/25/2015	<b>REQ. NUMBER</b> n/a
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### Satellite Phone-Radio-PTT-BGAN Products and Services

For more information, please send e-mail to Single Point of Contact (SPOC): john.tackley@vita.virginia.gov, or call (804) 416-6165

<b>ISSUING OFFICE</b> VITA - Supply Chain Management 11751 Meadowville Lane Chester, VA 23836	<b>SHIP TO:</b> as specified in each order  <b>BILL TO:</b> as specified in each order
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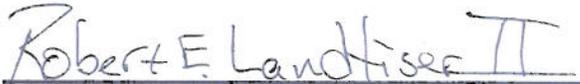
### SOLICITATION

This procurement is being conducted on behalf of VITA and other Public Bodies as defined in §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia and private institutions of higher education chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code. Sealed Bids for furnishing the Products and/or Services set forth in the Price Schedule will be returned to the Issuing Office. If hand carried, deliver to the SCM receptionist located at the Issuing Office address above. Bids must be received prior to 2:00 PM local time on the Date Due indicated above (Public bid opening at 2:30 PM). Please read and understand the attached Solicitation Instructions. This is an advertised solicitation consisting of this cover page, the Solicitation Instructions, Requirements, Pricing Schedule, Certification Regarding Lobbying and the Mandatory Contractual Terms and Conditions, and any other files, exhibits, attachments, provisions, representations, certifications or specifications as are attached or incorporated herein by reference, or any subsequent amendments issued.

### OFFER

In compliance with the Terms and Conditions set forth in this solicitation, the undersigned agrees, if this offer is accepted within 90 days from the Date Due above, to furnish any or all Bid Items awarded at the prices offered in the Pricing Schedule, delivered to the Ship To address within the time specified in individual orders. All offers are subject to the mandatory Terms and Conditions set forth herein.

### BIDDER INFORMATION

SUPPLIER FEIN	56-1550100	 <b>BIDDER'S BINDING SIGNATURE</b>
SUPPLIER NAME	Mackay Communications, Inc.	
ADDRESS	3691 Trust Drive	
CITY/STATE/ZIP	Raleigh NC 27616	
E-MAIL	Satserv@mackaycomm.com	
PHONE	919-850-3100	
FAX	919-954-1707	
		 <b>PRINTED NAME</b>

### AWARD

BID ITEMS AWARDED	AWARDED BY	AWARD DATE	CONTRACT NUMBER
ALL	 <b>SIGNATURE</b> for the Chief Information Officer (CIO) of the Commonwealth of Virginia  <u>Doug Crenshaw, Sourcing Mgr</u> <b>PRINTED NAME</b>	3/19/15	VA-150320-MACK

**NOTE:** This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, §2.2-4343.1 or against any Bidder because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

Commonwealth of Virginia Satellite Phone, Radio, PTT, BGAN Products and Services

IFB 2015-11 - Exhibit A - Pricing

Services Price List

Supplier Name:	Mackay Communications, Inc.			please populate all blue shaded regions
Submitted By:	Rob Landtiser	email: robert.landtiser@mackaycomm.com	phone: 919-850-3100	

**NOTE:** Authorized Contract Users must request a written quote from the Supplier, which references the VITA Contract Number. The Supplier Quote must be referenced in the order and be attached to the eVA Requisition or Purchase Order. If it is necessary to verify quoted contract price, go to the Index Price List "URL" shown below. Find the desired item and price located there. Apply the Government or Academic "Percentage Discount" shown below for the "Product Category," to calculate the "Net Price" (Contract Price) offered.

(Net Prices shown below were valid only on the date of contract award.)

**Definitions:**

**\* Index Price List:**

An "Index Price List" is defined as a list of prices found on a publicly available website URL. The URL may link to a manufacturer's price list, such as List Price or Suggested Retail Price. The URL may also be a contract price list, such as a GSA Schedule contract or another government contract. The URL and pricing provided must be independently controlled, that is to say not under the control of the firm that is bidding. The bidder will offer a Contract Discount<sup>1</sup>, which will be calculated against the prices in the Index Price List at the URL provided. The Contract Discount may be a negative or positive value, which, when calculating from the Index Price<sup>2</sup> for a product or service, results in the Contract Price<sup>3</sup> for that specific product or service.

**<sup>1</sup> Contract Discount:**

The "Contract Discount" is defined as the percentage value that is used along with the Index Price in calculating the Contract Price.

**<sup>2</sup> Index Price:**

The "Index Price" is defined as the individual price for a contract item, product or service, as shown at the URL for the Index Price List.

**<sup>3</sup> Contract Price (Net Price offered to the Commonwealth):**

"Contract Price" is defined as the result of multiplying the Index Price by the Contract Discount.

**The formula for calculating the Contract Price is: "Contract Price = Index Price - (Contract Discount)"**

Index Price List Source	Effective Date
Mackay Communications, Inc.	Feb-15
URL	frequency
Product Price list is available anytime by contacting Satellite Services Account Manager.	Annual updates or when price changes occur from airtime provider.

**Comprehensive Services Catalog/Price List**

Product Description Fields				Government Pricing			Academic Pricing			
Product Category	Your Product Number (if different than manuf. Product #)	Manufacturer	Manufacturer Product Number	Pricing Description	Index Price	Percentage Discount	Net Price Offered to Commonwealth	Index Price	Percentage Discount	Net Price Offered to Commonwealth
Iridium Phone-Monthly							\$ -			\$ -
Iridium Airtime Postpaid Monthly fee	Irid-MTHLY	NA	NA	Monthly Fee - Initial Year	\$ 54.00	20%	\$ 43.20	\$ 54.00	20%	\$ 43.20

Product Category	Your Product Number (if different than manuf. Product #)	Manufacturer	Manufacturer Product Number	Product Description	Pricing Description	Index Price	Percentage Discount	Net Price Offered to Commonwealth	Index Price	Percentage Discount	Net Price Offered to Commonwealth
Iridium Airtime Activation Fee	Irid-Activation	NA	NA	One Time Activation fee for Iridium 9505A/9555/9575	One Time Activation Fee	\$ 50.00	100%	\$ -	\$ 50.00	100%	\$ -
<b>Iridium Phone-Annual</b>											
Iridium Airtime Postpaid Annual Fee	Irid-ANN	NA	NA	Annual airtime plan for Iridium 9505/9505A/9555/9575, includes 10 minutes of airtime and 10 SMS per month	Annual Fee - Initial Year	\$ 648.00	20%	\$ 518.40	\$ 648.00	20%	\$ 518.40
Iridium Airtime Activation Fee	Irid-Activation	NA	NA	One Time Activation fee for Iridium 9505A/9555/9575	One Time Activation Fee	\$ 50.00	100%	\$ -	\$ 50.00	100%	\$ -
<b>Iridium Phone-Pre-Paid</b>											
Iridium Airtime 75 minutes	Irid-PP-75M	NA	NA	75 minute Prepaid Voucher for Iridium 9505/9505A/9555/9575	Monthly Fee - Initial Year	\$ 165.00	29%	\$ 117.15	\$ 165.00	29%	\$ 117.15
Iridium Airtime 200 minutes	Irid-PP-200M	NA	NA	200 minute Prepaid Voucher for Iridium 9505/9505A/9555/9575	Airtime good for 6 months	\$ 500.00	14%	\$ 430.00	\$ 500.00	14%	\$ 430.00
Iridium Airtime 500 minutes	Irid-PP-500M	NA	NA	500 minute Prepaid Voucher for Iridium 9505/9505A/9555/9575	Airtime good for 12 months	\$ 775.00	15%	\$ 658.75	\$ 775.00	15%	\$ 658.75
Iridium Airtime 1000 minutes	Irid-PP-1000M	NA	NA	1000 minute Prepaid Voucher for Iridium 9505/9505A/9555/9575	Airtime good for 24 months	\$ 1,550.00	15%	\$ 1,317.50	\$ 1,550.00	15%	\$ 1,317.50
Iridium Airtime 3000 minutes	Irid-PP-3000M	NA	NA	3000 minute Prepaid Voucher for Iridium 9505/9505A/9555/9575	Airtime good for 24 months	\$ 3,100.00	13%	\$ 2,697.00	\$ 3,100.00	13%	\$ 2,697.00
Iridium Airtime 5000 minutes	Irid-PP-5000M	NA	NA	5000 minute Prepaid Voucher for Iridium 9505/9505A/9555/9575	Airtime good for 24 months	\$ 4,500.00	13%	\$ 3,915.00	\$ 4,500.00	13%	\$ 3,915.00
Iridium Airtime Activation Fee	Irid-Activation	NA	NA	One Time Activation fee for Iridium 9505A/9555/9575	One Time Activation Fee	\$ 50.00	100%	\$ -	\$ 50.00	100%	\$ -
<b>Radio-Monthly</b>											
Monthly Fee	Not available							\$ -			\$ -
100 minutes	Not available							\$ -			\$ -
100 min. fee	Not available							\$ -			\$ -
1000 minutes	Not available							\$ -			\$ -
1000 min. fee	Not available							\$ -			\$ -
Activation fee	Not available							\$ -			\$ -
<b>Radio-Annual</b>											
Monthly Fee	Not available							\$ -			\$ -
100 minutes	Not available							\$ -			\$ -
1000 minutes	Not available							\$ -			\$ -
Activation fee	Not available							\$ -			\$ -
<b>Radio-Pre-Paid</b>											
100 minutes	Not available							\$ -			\$ -
1000 minutes	Not available							\$ -			\$ -
Activation fee	Not available							\$ -			\$ -
<b>BGAN</b>											
Iridium Airtime Monthly Fee	Not available							\$ -			\$ -
Iridium Airtime Annual Fee	Not available							\$ -			\$ -
Iridium BGAN 2 BGAN Fee	Not available							\$ -			\$ -
Iridium Activation Fee	Not available							\$ -			\$ -
<b>Inmarsat Phone-Monthly</b>											
Inmarsat Airtime Postpaid Monthly fee	ISAT-MTHLY-NA-10	NA	NA	Monthly airtime for Isat Phone Pro & Isat 2 includes 10 minutes of airtime for calls originating in the continental US	Monthly Fee - Initial Year	\$ 24.95	14%	\$ 21.46	\$ 24.95	14%	\$ 21.46
Inmarsat Airtime Postpaid Monthly fee	ISAT-MTHLY-NA-50	NA	NA	Monthly airtime for Isat Phone Pro & Isat 2 includes 50 minutes of airtime for calls originating in the continental US	Monthly Fee - Initial Year	\$ 39.99	11%	\$ 35.59	\$ 39.99	11%	\$ 35.59
Inmarsat Airtime Postpaid Monthly fee	ISAT-MTHLY-NA-150	NA	NA	Monthly airtime for Isat Phone Pro & Isat 2 includes 150 minutes of airtime for calls originating in the continental US	Monthly Fee - Initial Year	\$ 59.99	11%	\$ 53.39	\$ 59.99	11%	\$ 53.39
Inmarsat Airtime Postpaid Monthly fee	ISAT-MTHLY-NA-250	NA	NA	Monthly airtime for Isat Phone Pro & Isat 2 includes 250 minutes of airtime for calls originating in the continental US	Monthly Fee - Initial Year	\$ 99.99	11%	\$ 88.99	\$ 99.99	11%	\$ 88.99
Inmarsat Airtime Postpaid Monthly fee	ISAT-MTHLY-STD-10	NA	NA	Monthly airtime for Isat Phone Pro & Isat 2 includes 10 minutes of airtime	Monthly Fee - Initial Year	\$ 40.00	27%	\$ 29.20	\$ 50.00	100%	\$ -
Inmarsat Airtime Postpaid Monthly fee	ISAT-MTHLY-ALL-60	NA	NA	Monthly airtime for Isat Phone Pro & Isat 2 includes 60 minutes of airtime	Monthly Fee - Initial Year	\$ 65.00	32%	\$ 44.20	\$ 65.00	32%	\$ 44.20

Product Category	Your Product Number (if different than manuf. Product #)	Manufacturer	Manufacturer Product Number	Product Description	Pricing Description	Index Price	Percentage Discount	Net Price Offered to Commonwealth	Index Price	Percentage Discount	Net Price Offered to Commonwealth
Inmarsat Airtime Activation Fee	ISAT-Activation	NA	NA	One Time Activation fee for Inmarsat Isat Phone Pro & Isat2	One Time Activation Fee	\$ 50.00	100%	\$ -	\$ 50.00	100%	\$ -
<b>Inmarsat Phone-Annual</b>											
Inmarsat Airtime Postpaid Annual Fee	ISAT-ANN-NA-120	NA	NA	Annual airtime for Isat Phone Pro & Isat 2 includes 120 minutes of airtime for calls originating in the continental US	Annual Fee - Initial Year	\$ 299.99	14%	\$ 257.99	\$ 299.99	13%	\$ 260.99
Inmarsat Airtime Postpaid Annual Fee	ISAT-ANN-NA-600	NA	NA	Annual airtime for Isat Phone Pro & Isat 2 includes 600 minutes of airtime for calls originating in the continental US	Annual Fee - Initial Year	\$ 479.99	12%	\$ 422.39	\$ 479.99	13%	\$ 417.59
Inmarsat Airtime Postpaid Annual Fee	ISAT-ANN-NA-1800	NA	NA	Annual airtime for Isat Phone Pro & Isat 2 includes 1800 minutes of airtime for calls originating in the continental US	Annual Fee - Initial Year	\$ 719.99	11%	\$ 640.79	\$ 719.99	11%	\$ 640.79
Inmarsat Airtime Postpaid Annual Fee	ISAT-ANN-NA-3000	NA	NA	Annual airtime for Isat Phone Pro & Isat 2 includes 3000 minutes of airtime for calls originating in the continental US	Annual Fee - Initial Year	\$ 1,199.99	11%	\$ 1,067.99	\$ 1,199.99	11%	\$ 1,067.99
Inmarsat Airtime Postpaid Annual Fee	ISAT-MTHLY-ALL-720	NA	NA	Monthly airtime for Isat Phone Pro & Isat 2 includes 720 minutes of airtime	Annual Fee - Initial Year	\$ 778.00	12%	\$ 684.64	\$ 778.00	12%	\$ 684.64
Inmarsat Airtime Activation Fee	ISAT-Activation	NA	NA	One Time Activation fee for Inmarsat Isat Phone Pro & Isat2	One Time Activation Fee	\$ 50.00	100%	\$ -	\$ 50.00	100%	\$ -
<b>Inmarsat Phone-Pre-Paid</b>											
Inmarsat Airtime 100 minutes	ISAT-PP-100	NA	NA	100 minute Prepaid Voucher for Isat Phone Pro & Isat2	6 Month fee - Initial Year	\$ 115.00	28%	\$ 82.80	\$ 115.00	28%	\$ 82.80
Inmarsat Airtime 250 minutes	ISAT-PP-250	NA	NA	250 minute Prepaid Voucher for Isat Phone Pro & Isat2	6 Month fee - Initial Year	\$ 295.00	30%	\$ 206.50	\$ 295.00	30%	\$ 206.50
Inmarsat Airtime 500 minutes	ISAT-PP-500	NA	NA	500 minute Prepaid Voucher for Isat Phone Pro & Isat2	Annual Fee - Initial Year	\$ 525.00	22%	\$ 409.50	\$ 525.00	22%	\$ 409.50
Inmarsat Airtime 1000 minutes	ISAT-PP-1000	NA	NA	1000 minute Prepaid Voucher for Isat Phone Pro & Isat2	Annual Fee - Initial Year	\$ 1,000.00	18%	\$ 820.00	\$ 1,000.00	18%	\$ 820.00
Inmarsat Airtime 2500 minutes	ISAT-PP-2500	NA	NA	2500 minute Prepaid Voucher for Isat Phone Pro & Isat2	Annual Fee - Initial Year	\$ 2,500.00	18%	\$ 2,050.00	\$ 2,500.00	18%	\$ 2,050.00
Inmarsat Airtime 5000 minutes	ISAT-PP-5000	NA	NA	5000 minute Prepaid Voucher for Isat Phone Pro & Isat2	Annual Fee - Initial Year	\$ 5,000.00	18%	\$ 4,100.00	\$ 5,000.00	18%	\$ 4,100.00
Inmarsat Airtime Activation Fee	ISAT-Activation	NA	NA	One Time Activation fee for Inmarsat Isat Phone Pro & Isat2	One Time Activation Fee	\$ 50.00	100%	\$ -	\$ 50.00	100%	\$ -
<b>Radio-Monthly</b>											
Monthly Fee	Not available							\$ -			\$ -
100 minutes	Not available							\$ -			\$ -
100 min. fee	Not available							\$ -			\$ -
1000 minutes	Not available							\$ -			\$ -
1000 min. fee	Not available							\$ -			\$ -
Activation fee	Not available							\$ -			\$ -
<b>Radio-Annual</b>											
Monthly Fee	Not available							\$ -			\$ -
100 minutes	Not available							\$ -			\$ -
1000 minutes	Not available							\$ -			\$ -
Activation fee	Not available							\$ -			\$ -
<b>Radio-Pre-Paid</b>											
100 minutes	Not available							\$ -			\$ -
1000 minutes	Not available							\$ -			\$ -
Activation fee	Not available							\$ -			\$ -
<b>Inmarsat BGAN</b>											
Inmarsat Postpaid Airtime Monthly Fee	BGAN-MTHLY-SD	NA	NA	Standard Monthly BGAN Plan includes 10 MB of data	Monthly Fee - Initial Year	\$ 69.00	27%	\$ 50.37	\$ 69.00	27%	\$ 50.37
Inmarsat Postpaid Airtime Annual Fee	BGAN-ANN-SD	NA	NA	Standard Annual BGAN Plan includes 10 MB of data per month	Annual Fee - Initial Year	\$ 700.00	24%	\$ 532.00	\$ 700.00	24%	\$ 532.00
Inmarsat BGAN 2 BGAN Fee	BGAN-2-BGAN	NA	NA	BGAN to BGAN Voice per minute	Annual Fee - Initial Year	\$ 0.78	29%	\$ 0.55	\$ 0.78	29%	\$ 0.55
Inmarsat Activation Fee	BGAN-Activation	NA	NA	One Time Activation fee for BGAN Terminal	One Time Activation Fee	\$ 50.00	100%	\$ -	\$ 50.00	100%	\$ -
<b>Globalstar Phone-Monthly</b>											
								\$ -			\$ -

Product Category	Your Product Number (if different than manuf. Product #)	Manufacturer	Manufacturer Product Number	Product Description	Pricing Description	Index Price	Percentage Discount	Net Price Offered to Commonwealth	Index Price	Percentage Discount	Net Price Offered to Commonwealth
Globalstar Postpaid Airtime 10 minutes	GSTAR-MTHLY-10	NA	NA	Orbit 10 Globalstar Monthly airtime plan includes 10 minutes	Monthly Fee - Initial Year	\$ 24.99	18%	\$ 20.49	\$ 24.99	18%	\$ 20.49
Globalstar Postpaid Airtime 40 minutes	GSTAR-MTHLY-40	NA	NA	Orbit 10 Globalstar Monthly airtime plan includes 40 minutes	Monthly Fee - Initial Year	\$ 39.99	18%	\$ 32.79	\$ 39.99	18%	\$ 32.79
Globalstar Postpaid Airtime 100 minutes	GSTAR-MTHLY-100	NA	NA	Orbit 100 Globalstar Monthly airtime plan includes 100 minutes	Monthly Fee - Initial Year	\$ 64.99	24%	\$ 49.39	\$ 64.99	24%	\$ 49.39
Globalstar Postpaid Airtime 200 minutes	GSTAR-MTHLY-200	NA	NA	Orbit 100 Globalstar Monthly airtime plan includes 200 minutes	Monthly Fee - Initial Year	\$ 99.99	23%	\$ 76.99	\$ 99.99	23%	\$ 76.99
Globalstar Postpaid Airtime Unlimited minutes	GSTAR_MTHLY-UL	NA	NA	Orbit 100 Globalstar Monthly airtime plan includes UNLIMITED minutes	Monthly Fee - Initial Year	\$ 149.99	23%	\$ 115.49	\$ 149.99	23%	\$ 115.49
Globalstar Airtime Activation Fee	GSTAR-Activation	NA	NA	One Time Activation fee for Globalstar 1600 & 1700 phones	One Time Activation Fee	\$ 50.00	100%	\$ -	\$ 50.00	100%	\$ -
<b>Globalstar Phone-Annual</b>								\$ -			\$ -
Globalstar Postpaid Airtime 120 minutes	GSTAR-ANN-120	NA	NA	Galaxy 120 Globalstar Annual airtime plan includes 120 minutes	Annual Fee - Initial Year	\$ 300.00	18%	\$ 246.00	\$ 300.00	18%	\$ 246.00
Globalstar Postpaid Airtime 480 minutes	GSTAR-ANN-480	NA	NA	Galaxy 480 Globalstar Annual airtime plan includes 480 minutes	Annual Fee - Initial Year	\$ 480.00	18%	\$ 393.60	\$ 480.00	18%	\$ 393.60
Globalstar Postpaid Airtime 1200 minutes	GSTAR-ANN-1200	NA	NA	Galaxy 1200 Globalstar Annual airtime plan includes 1200 minutes	Annual Fee - Initial Year	\$ 780.00	24%	\$ 592.80	\$ 780.00	24%	\$ 592.80
Globalstar Postpaid Airtime 2400 minutes	GSTAR-ANN-2400	NA	NA	Galaxy 2400 Globalstar Annual airtime plan includes 2400 minutes	Annual Fee - Initial Year	\$ 1,200.00	23%	\$ 924.00	\$ 1,200.00	23%	\$ 924.00
Globalstar Postpaid Airtime Unlimited minutes	GSTAR-ANN-UL	NA	NA	Galaxy Unlimited Globalstar Annual airtime plan includes Unlimited minutes	Annual Fee - Initial Year	\$ 1,800.00	23%	\$ 1,386.00	\$ 1,800.00	23%	\$ 1,386.00
Globalstar Airtime Activation Fee	GSTAR-Activation	NA	NA	One Time Activation fee for Globalstar 1600 & 1700 phones	One Time Activation Fee	50	100%	0	50	100%	0
<b>Radio-Monthly</b>								\$ -			\$ -
Monthly Fee	Not available	Not available	Not available					\$ -			\$ -
100 minutes	Not available	Not available	Not available					\$ -			\$ -
100 min. fee	Not available	Not available	Not available					\$ -			\$ -
1000 minutes	Not available	Not available	Not available					\$ -			\$ -
1000 min. fee	Not available	Not available	Not available					\$ -			\$ -
Activation fee	Not available	Not available	Not available					\$ -			\$ -
<b>Radio-Annual</b>								\$ -			\$ -
Monthly Fee	Not available	Not available	Not available					\$ -			\$ -
100 minutes	Not available	Not available	Not available					\$ -			\$ -
1000 minutes	Not available	Not available	Not available					\$ -			\$ -
Activation fee	Not available	Not available	Not available					\$ -			\$ -
<b>Radio-Pre-Paid</b>								\$ -			\$ -
100 minutes	Not available	Not available	Not available					\$ -			\$ -
1000 minutes	Not available	Not available	Not available					\$ -			\$ -
Activation fee	Not available	Not available	Not available					\$ -			\$ -
<b>BGAN</b>								\$ -			\$ -
Airtime Monthly Fee	Not available	Not available	Not available					\$ -			\$ -
Airtime Annual Fee	Not available	Not available	Not available					\$ -			\$ -
BGAN 2 BGAN Fee	Not available	Not available	Not available					\$ -			\$ -
Activation Fee	Not available	Not available	Not available					\$ -			\$ -

**INFORMATION TECHNOLOGY HARDWARE AND MAINTENANCE CONTRACT  
RESULTING FROM IFB NUMBER 2015-11  
CONTRACTUAL TERMS AND CONDITIONS  
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**INFORMATION TECHNOLOGY HARDWARE AND MAINTENANCE CONTRACT  
RESULTING FROM IFB NUMBER 2015-11  
CONTRACTUAL TERMS AND CONDITIONS**

THIS INFORMATION TECHNOLOGY Hardware and Maintenance CONTRACT (“Contract”) is entered into by and between the Virginia Information Technologies Agency (VITA) pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia (hereinafter referred to as “VITA”) and Supplier, to be effective as of the date set forth on the signature page of this Contract (“Contract Award Date” or “Effective Date”).

**1. PURPOSE AND SCOPE**

This Contract sets forth the terms and conditions under which Supplier shall sell the Product identified in Pricing Exhibit A and referenced on the signature page of this Contract and to provide various Services to the Authorized Users.

**2. DEFINITIONS**

**A. Acceptance**

Successful delivery and performance by the Supplier of its contractual commitments at the location(s) designated in the applicable order, including completed and successful Acceptance testing in conformance with the Requirements as determined by the Authorized User in the applicable order.

**B. Agent**

Any third party independent agent of any Authorized User.

**C. Authorized Users**

Except for telecommunications contracts, means 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>.

**D. Business Day/Hour**

Normal operating hours for the Commonwealth of Virginia: Monday-Friday, 8 a.m.-5 p.m. Eastern Standard/Daylight Time, unless otherwise specified on the applicable order, excluding Commonwealth-designated holidays.

**E. Computer Virus**

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

**F. 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 or (iv) is identifiable or should be reasonably considered as protected health information; (v) any personally identifiable information,

including information about VITA's employees, contractors, and customers, that is protected by statute or other applicable law.

**G. Consumables**

Toner, drums, fuser agent, developer, ink cartridges, maintenance kits, feeder rollers, transfer kits, waste toner boxes and cleaning kits and other products which may be needed for the operation of the Devices provided by the contractor on behalf of the Authorized User in order to fulfill the services.

**H. Deliverable**

The tangible embodiment of the work performed or Services, Maintenance Services, Licensed Services, Solution, Component, Software, plans, reports, data, Product, Supplier Product and Updates provided by the Supplier in fulfilling its obligations under the Contract or as identified in the applicable r order, including the development or creation of Work Product, if Work Product is authorized under the Contract.

**I. Desktop Productivity Software (optional)**

Commercial Off-The-Shelf software (COTS) general in nature, not broad enterprise applications, which can be purchased and used immediately "as is," without modification, in the same form in which it was sold in the commercial marketplace. Standard options are not considered modifications.

**J. Documentation**

Those materials (including user manuals, training materials, guides, product descriptions, technical manuals, product specifications, supporting materials and Updates) detailing the information and instructions needed in order to allow any Authorized User and its Agents or Application Users to make productive use of the Application, Software, Solution, Component, Product, Service, Licensed Services or Deliverable, and to implement and develop self-sufficiency with regard to the Application, Software, Solution, Component, Product, Service, Licensed Services or Deliverable, provided by Supplier in fulfilling its obligations under the Contract or as may be specified in any r order issued hereunder.

**K. Electronic Self-Help**

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

**L. Maintenance Coverage Period (MCP)**

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

**M. Maintenance Level**

The defined 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 X hereto or as defined in any r order issued hereunder. The actual Maintenance Level for a unit of Software or Product shall be set forth in the executed order for Maintenance of that Software or Product referencing this Contract.

**N. Maintenance Services (or "Maintenance" or "Software Maintenance")**

If authorized by the Contract, means those services, preventive and remedial, provided or performed by Supplier under the Contract or for an Authorized User in order to ensure continued operation of the Software or Product, including Software Updates. Maintenance Services shall include support services. Software Maintenance Services may include the development of Work Product, if so authorized in the Contract.

**O. Party**

Supplier, VITA or any Authorized User.

**P. Preventative Maintenance**

Maintenance that can be performed in advance of an actual problem or malfunction through the monitoring of internal diagnostic reports generated automatically by print output devices.

**Q. Product**

Means hardware, peripherals, and any other equipment, including the System Software, all upgrades, all applicable user documentation and related accessories as set forth on Exhibit X or as specified in any order provided pursuant to the Contract.

**R. Receipt**

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

**S. Requirements**

The functional, performance, operational, compatibility, Acceptance testing criteria and other parameters and characteristics of the Product, Software, Solution, Component, Service(s), Application and Licensed Services and Deliverables, as authorized by the Contract and/or as set forth in Exhibit X and/or the applicable order and such other parameters, characteristics, or performance standards that may be agreed upon in writing by the Parties.

**T. Response Time**

The time between Supplier's receipt of Authorized User's request for Maintenance and the time Supplier has notified Authorized User that it has commenced repair and resolution of the reported problem.

**U. Services**

Any work performed or service provided by Supplier in fulfilling its obligations under the Contract or, as applicable, any order issued under the Contract, including software updates, solution, products, implementation, installation, maintenance, support, testing, training, or other provision to the Authorized User of any Deliverable described in the applicable order, as authorized by the Contract scope. This definition does not include Licensed Services.

**V. Software**

If Software is authorized under the Contract, means the programs and code provided by Supplier under the Contract or any order issued hereunder as a component(s) of any Deliverable or Component of any Solution, and any subsequent modification of such programs and code, excluding Work Product. For COTS (boxed) software, means the programs and code, and any subsequent releases, provided by Supplier under this Contract as set forth in Exhibit X or as described on Supplier's US and International price lists in effect at time of Authorized User's placement of order. For Software Maintenance contracts Software also includes the programs and code provided by Supplier under the Contract or any order issued hereunder in the form of Software Updates.

**W. Software Publisher**

If Software is authorized under the Contract, means the licensor of the Software, other than Supplier, provided by Supplier under this Contract.

**X. 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).

**Y. 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.

**Z. Update**

As applicable, any update, modification or new release of the Software, System Software, Application, Documentation or Supplier Product that Supplier makes generally available to its customers at no additional cost. Software Updates include patches, fixes, upgrades,

enhancements, improvements, or access mode, including without limitation additional capabilities to or otherwise improve the functionality, increase the speed, efficiency, or base operation of the Software.

**AA. Warranty Period**

The greater of the manufacturer's Standard Warranty, or as specified in the Requirements Warranty Period shall commence upon Acceptance.

**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 three (3) years. VITA, in its sole discretion, may extend this Contract for up to three (3) additional one (1) year periods after the expiration of the initial three (3) year period. VITA will issue a written notification to the Supplier stating the extension period thirty (30) days prior to the expiration of any current term. In addition, performance of an order issued during the term of this Contract may survive the expiration of the term of this Contract, in which case all contractual terms and conditions required for the operation of such order shall remain in full force and effect until all of Supplier's obligations pursuant to such order have met the final Acceptance criteria of the applicable Authorized User.

**B. Termination for Convenience**

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

**C. Termination for Breach or Default**

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

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

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

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

**E. Effect of Termination**

Upon termination, neither the Commonwealth, nor VITA, nor any Authorized User shall have any future liability except for Deliverables accepted by the Authorized User or Services, including as applicable, Licensed Services and Maintenance Services, rendered by Supplier and accepted by the Authorized User prior to the termination date.

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

**F. Termination by Supplier**

Termination by Supplier will not be considered.

**G. 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 the Supplier's contractual obligations, or any portion thereof, as requested by VITA or the Authorized User, to any other supplier with whom VITA or such Authorized User contracts for provision of same. This obligation may extend beyond expiration or termination of the Contract for a period not to exceed six (6) months. In the event of a termination for breach and/or default of Supplier, Supplier shall provide such assistance at no charge or fee to VITA or any Authorized User; otherwise, Supplier shall provide such assistance at the hourly rate or a charge agreed upon by Supplier and VITA or an Authorized User.

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

**I. Contract Closeout**

Prior to the contract's expiration date, Supplier may be provided contract close out documentation and shall complete, sign and return to VITA Supply Chain Management within 30 days of receipt. This documentation may include, but not be limited to: Patent/Royalty Certificate, Tangible Property/Asset Certificate, Escrow Certificate, SWaM Reports Completion Certificate, other required Small Business (SWaM) Procurement Plan compliance/variance and non-SWaM spend documentation as described in the Reporting section of this Contract, 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 the Commonwealth's 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. GENERAL WARRANTY**

Supplier warrants and represents to VITA that Supplier will fulfill its contractual obligations and meet all needed requirements as described in Exhibit A as follows:

**A. Ownership**

Supplier is the owner of the Product or otherwise has, to the best of its knowledge, the right to grant to the Commonwealth or any Authorized User title to or the right to use the Product

provided hereunder. Upon receipt of payment, the Commonwealth or the ordering Authorized User, as applicable, shall obtain good and clear title to the Product, excluding the System Software, free and clear of all liens, claims, security interests and encumbrances. In addition, Supplier has the right to provide the Services offered hereunder.

**B. Limited Warranty and Remedy**

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

**C. Performance Warranty**

Supplier warrants and represents the following with respect to Performance:

- i. All contractual obligations shall be performed with care, skill and diligence, consistent with or above applicable professional standards currently recognized in Supplier's profession, and Supplier shall be responsible for the professional quality, technical accuracy, completeness and coordination of all plans, information, specifications, Deliverables and Services furnished under this Contract;
- ii. All contractual obligations pursuant to a particular Invitation for Bid ("IFB"), quote, or Request for Quote (RFQ), and any associated Deliverables shall be fit for the particular purposes specified by VITA in the IFB and in this Contract and, if applicable, by the Authorized User requesting such quote or issuing such RFQ, and Supplier is possessed of superior knowledge with respect to its contractual obligations and is aware that all Authorized Users are relying on Supplier's skill and judgment in providing its contractual obligations;

ii. Documentation and Deliverables

Supplier warrants the following as applicable to the Contract:

- i. The Documentation which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow a user/programmer to understand and fully utilize, as applicable, the Software, System Software, Services, Maintenance Services, Product, Application, Licensed Services, Updates and Deliverables without reference to any other materials or information.
- ii. The Software, System Software, Services, Maintenance Services, Product, Application, Licensed Services, Updates and Deliverables provided or delivered hereunder are at the current release level unless an Authorized User specifies an older version in its order .
- iii. No Update or engineering change or revision made to any Software, System Software, Services, Maintenance Services, Product, Application, Licensed Services, Updates and Deliverables provided by Supplier hereunder shall degrade the performance of any Software, System Software, Services, Maintenance Services, Product, Application, Licensed Services, and Deliverables to a level below that defined in the Requirements or the Product manufacturer's or Software Publisher's published specifications, as applicable, or cause any other warranty to be breached, or require an Authorized User to acquire additional hardware equipment or software.

v. Malicious Code

Supplier has used its best efforts through quality assurance procedures to ensure that there are no Computer Viruses or undocumented features in any Solution, Solution Component, Deliverables, Product, Software, System Software, Update, Application and/or Licensed Service, as obligated and provided by Supplier under the order , at the time of delivery to the Authorized User. Supplier warrants that the Solution, Solution Components, Deliverables, Product, Software,

System Software, Update, Application and/or Licensed Services, as obligated and provided by Supplier under the order does not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any Authorized User's use of the Solution, Solution Components, Deliverables, Product, Software, System Software, Application and/or Licensed Service.

Notwithstanding any rights granted under this Contract or at law, Supplier hereby waives under any and all circumstances any right it may have or may hereafter have to exercise Electronic Self-Help. Supplier agrees that an Authorized User may pursue all remedies provided under law in the event of a breach or threatened breach of this Section, including injunctive or other equitable relief.

**D. Open Source**

Supplier will notify all Authorized Users if the Solution, Solution Components, Deliverables, Product, Software, Updates, Application and/or Licensed Services, as obligated and provided by Supplier, contains any Open Source code and identify the specific Open Source License that applies to any embedded code dependent on Open Source code, provided by Supplier under this Contract.

**E. Supplier's Viability**

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

**F. Supplier's Past Experience**

Supplier warrants that it has met similar contractual obligations and fulfilled the Requirements as set forth in Exhibit A and in this Contract, in similar or greater complexity, to other customers without significant problems due to Supplier's performance and without causing a contractual breach or default claim by any customer.

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

**5. SCOPE OF USE**

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

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

**A. Fees and Charges**

As consideration for the Supplier's performance obligations and any additional products and services provided hereunder to an Authorized User in accordance with the scope of this Contract and the Requirements, as authorized by Exhibit A, and per the Authorized User's order, an Authorized User shall pay Supplier the fee(s) set forth in the Pricing exhibit, which lists any and all fees and charges. The fees and any associated discounts shall be applicable throughout the term of this Contract; provided, however, that in the event the fees or discounts apply for any period less than the entire term, Supplier agrees that it shall not increase the fees more than once during any twelve (12) month period, commencing at the end of year one (1). No such increase shall exceed the lesser of three percent (3%) or the annual increase in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, Not Seasonally Adjusted, as

published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/cpi/home.htm>), for the effective date of the increase compared with the same index one (1) year prior. Any such change in price shall be submitted in writing to VITA and to the Authorized User if such change impacts any SOW or order and in accordance with the above and shall not become effective for sixty (60) days thereafter. Supplier agrees to offer price reductions to ensure compliance with the Competitive Pricing Section.

#### **A. Ordering**

Notwithstanding all Authorized User's rights to license or purchase Supplier's products or services under this Contract, an Authorized User is under no obligation to purchase or license from Supplier any of Supplier's products or services.

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

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

This ordering authority is limited to issuing orders for the contractual offerings and Requirements available under the scope of 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.

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

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

Authorized User may elect, at any time, another 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.

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

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

#### **B. Reproduction Rights for Supplier-Provided Software**

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

during the quarter. Supplier shall invoice such Authorized User for the net number of new licenses reported as deployed.

**C. Reimbursement of Expenses**

If allowable pursuant to an Authorized User's order, such Authorized User shall pay, or reimburse Supplier, for all reasonable and actual travel-related expenses for greater than thirty (30) miles from portal to portal incurred by Supplier during the relevant period; provided, however, that such Authorized User shall only be liable to pay for Supplier's travel-related expenses, including transportation, meals, lodging and incidental expenses, that have been authorized by such Authorized User in advance in the order and which will be reimbursable by such Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts (<http://www.doa.virginia.gov/>, or a successor URL(s)). If the Authorized User is a private institution chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code, such private institution may have its own per diem amounts applicable to Supplier's pre-approved travel expenses.

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

**D. Demonstration and/or Evaluation**

If the Supplier's contractual obligations include the provision of a Solution, an Application and Licensed Services, or Software-as-a-Service, at the request of any Authorized User, Supplier shall perform a demonstration of its Solution, or its Application and Licensed Services or Software-as-a Service at such Authorized User's location and at no charge.

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

**E. Supplier Quote and Request for Quote**

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

Supplier shall respond to the RFQ by providing a quote, which shall include (a) a detailed description of each product or service proposed, including such product and services components, at the Exhibit B line item level, (b) the quantity of each such component, (c) the contract price, (d) any additional percentage discount offered, and (e) an extended price. If requested by the Authorized User, Supplier's quote shall also include a proposal describing the approach Supplier plans to take in developing, implementing, and maintaining its offering for the Authorized User. Should Supplier be unable to respond to the RFQ due, for example, to resource constraints, Supplier shall notify Authorized User in writing of its inability to perform the work requested by such Authorized User, and provide the reasons for such inability to perform, prior to the due date for the submission of quotes in response to the RFQ. [If only one contract is to be awarded add:] Supplier's failure to respond to an RFQ may be deemed a default of this Contract.

#### **F. Invoice Procedures**

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

- i. Dates/periods that invoice covers, including any service or subscription periods, as applicable.
- ii. Line item description of the Deliverable(s), Product(s), Software, Hardware, Services, Solution and Solution Components, Maintenance Services, and/or Licensed Services, as applicable to this Contract, including components thereof or service type, and, if applicable, the project milestone.
- iii. Quantity, charge and extended pricing for each line item
- iv. Applicable order and/ date
- v. This Contract number and the applicable order number and/ number
- vi. Supplier's Federal Employer Identification Number (FEIN)

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

#### **G. Purchase Payment Terms**

Supplier is responsible for the accuracy of its billing information. Supplier agrees not to issue invoices hereunder until all Supplier's performance obligations have been accepted and in accordance with the milestone payment schedule, if any, in the applicable order , or until after services have been rendered. Charges for Deliverables, components or services accepted more than ninety (90) days prior to receipt of a valid invoice may not be paid. Should Supplier repeatedly over bill Authorized User, Authorized User may assess a one percent (1%) charge for the amount over-billed for each month that such over-billing continues.

### **7. UNIVERSAL SERVICE FUND**

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

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

### **8. SUPPLIER-SPONSORED PRODUCT PROMOTIONS**

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

percentage discount offered during the promotion. VITA shall communicate to Supplier in writing its agreement to the promotion.

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

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

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

## **9. REPORTING**

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

- i. Report of Sales; and
- ii. Small Business Procurement and Subcontracting Report

These reports must be submitted using the instructions and further detailed requirements and templates found at the following URL: <http://www.vita.virginia.gov/scm/default.aspx?id=97>

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

In conjunction with the requirements in the Invoice Procedures section of this Contract, Supplier shall provide to VITA within 30 days of the date of expiration of the contract an accompanying statement certifying that Supplier has fully complied with the Contract's Small Business (SWaM) Procurement Plan, and if Supplier has not fully complied, provide a written explanation of any variances between such Plan and the actual participation. The Supplier's compliance confirmation and/or written explanation of variance shall be maintained by VITA, in the contract file.

Failure by Supplier to comply with its contractually obligated Small Business (SWaM) Procurement Plan may prohibit or delay any renewals of the Contract. Also, Supplier's failure to comply with its Small Business (SWaM) Procurement Plan or to explain any variance between the proposed Plan and actual SWaM subcontracting spend may result in the withholding of any final payment due Supplier.

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

## **10. TRAINING AND DOCUMENTATION**

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

## **11. CONFIDENTIALITY**

### **A. Treatment and Protection**

Each Party shall (i) hold in strict confidence all Confidential Information of any other Party, (ii) use the Confidential Information solely to perform or to exercise its rights under this Contract, and (iii) not transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any third-party. However, an Authorized User may disclose the Confidential Information as delivered by Supplier to subcontractors, contractors or agents of such Authorized User that are bound by non-disclosure contracts with such Authorized User. Each Party shall take the same measures to protect against the disclosure or use of the Confidential

Information as it takes to protect its own proprietary or confidential information (but in no event shall such measures be less than reasonable care).

## **B. Exclusions**

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

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

## **C. Return or Destruction**

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

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

## **12. INDEMNIFICATION AND LIABILITY**

### **A. Indemnification**

Supplier agrees to indemnify, defend and hold harmless the Commonwealth, VITA, any Authorized User, their officers, directors, agents and employees (collectively, "Commonwealth's Indemnified Parties") from and against any and all losses, damages, claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, assessments, fines, penalties (whether criminal or civil), judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Commonwealth's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) any act or omission of any employee, agent, or subcontractor of Supplier, (iii) breach of any representation, warranty or covenant of Supplier contained herein, (iv) any defect in the Supplier-provided products or services, or (v) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Supplier-provided products or services. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases involving the Commonwealth or state agencies, the selection and approval of counsel and approval of any settlement shall be satisfactory to the Commonwealth. In the event of a settlement between Supplier and a private institution of higher education who is an Authorized User of this contract, such settlement shall be satisfactory to that institution.

In the event that a Claim is commenced against any of Commonwealth's Indemnified Parties alleging that use of the Supplier-provided products or services, including any components thereof, or that the Supplier's performance or delivery of any product or service under this Contract infringes any third party's intellectual property rights and Supplier is of the opinion that the allegations in such Claim in whole or in part are not covered by this indemnification provision, Supplier shall immediately notify VITA and the affected Authorized User(s) in writing, via certified

mail, specifying to what extent Supplier believes it is obligated to defend and indemnify under the terms and conditions of this Contract. Supplier shall in such event protect the interests of the Commonwealth's Indemnified Parties and secure a continuance to permit VITA and the affected Authorized User(s) to appear and defend their interests in cooperation with Supplier as is appropriate, including any jurisdictional defenses VITA or the affected Authorized User(s) may have.

In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Supplier-provided Deliverables, Products, Software, Services, Solution, including Solution Components, Application and Licensed Services, as applicable, or Supplier's performance, and in addition to all other obligations of Supplier in this Section, Supplier shall at its expense, either (a) procure for all Authorized Users the right to continue use of such infringing Deliverables, Products, Software, Services, Solution, including Solution Components, Application and Licensed Services, as applicable, or any component thereof; or (b) replace or modify such infringing Deliverables, Products, Software, Services, Solution, including Solution Components, Application and Licensed Services, as applicable, or any component thereof, with non-infringing Deliverables, Products, Software, Services, Solution or Solution Component(s), Application and Licensed Services, as applicable, satisfactory to VITA. And in addition, Supplier shall provide any Authorized User with a comparable temporary replacement products and/or services or reimburse VITA or any Authorized User for the reasonable costs incurred by VITA or such Authorized User in obtaining an alternative product or service, in the event such Authorized User cannot use the affected Deliverable, Product, Software, Services, Solution or Solution Component(s), Application and Licensed Services, as applicable, or any component thereof. 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 Deliverables, Products, Software, Services, Solution, Solution Component, Application and Licensed Services, as applicable, or any component thereof, along with any other components rendered unusable by any Authorized User as a result of the infringing component, and refund the price paid to Supplier for such components.

#### **B. Liability**

Except for liability with respect to (i) any intentional or willful misconduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) any act or omission of any employee, agent, or subcontractor of Supplier, (iii) claims for bodily injury, including death, and real and tangible property damage, (iv) Supplier's indemnification obligations, (v) Supplier's confidentiality obligations, (vi) Supplier's security compliance obligations, and (vii) Supplier's data privacy and security obligations as specified under this Contract, Supplier's liability shall be limited to twice the aggregate value of the delivered and accepted Deliverables, Products, Software, Services, Solution, including Solution Components, Application and Licensed Services, as applicable, provided by Supplier to all Authorized Users under this Contract. Supplier agrees that it is fully responsible for all acts and omissions of its employees, agents, and subcontractors, including their gross negligence or willful misconduct. The limitation shall apply on a per-incident basis, it being understood that multiple losses stemming from the same root cause constitute a single incident.

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.

### **13. SECURITY COMPLIANCE**

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

operation and which have been supplied to Supplier by such Authorized User. Supplier shall also comply with all applicable federal, state and local laws and regulations. For any individual Authorized User location, security procedures may include but not be limited to: background checks, records verification, photographing, and fingerprinting of Supplier's employees or agents. Supplier may, at any time, be required to execute and complete, for each individual Supplier employee or agent, additional forms which may include non-disclosure agreements to be signed by Supplier's employees or agents acknowledging that all Authorized User information with which such employees and agents come into contact while at the Authorized User site is confidential and proprietary. Any unauthorized release of proprietary or Personal information by the Supplier or an employee or agent of Supplier shall constitute a breach of its obligations under this Section and the Contract. Supplier shall immediately notify VITA and Authorized User, if applicable, of any Breach of Unencrypted and Unredacted Personal Information, as those terms are defined in Virginia Code 18.2-186.6, and other personal identifying information, such as insurance data or date of birth, provided by VITA or Authorized User to Supplier. Supplier shall provide VITA the opportunity to participate in the investigation of the Breach and to exercise control over reporting the unauthorized disclosure, to the extent permitted by law. Supplier shall indemnify, defend, and hold the Commonwealth, VITA, the Authorized User, their officers, directors, employees and agents harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable expenses suffered by, accrued against, or charged to or recoverable from the Commonwealth, VITA, the Authorized User, their officers, directors, agents or employees, on account of the failure of Supplier to perform its obligations pursuant this Section.

#### **14. IMPORT/EXPORT**

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

#### **15. BANKRUPTCY**

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

#### **16. GENERAL PROVISIONS**

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

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

imposed, assessed or levied as a result of this Contract or Services performed pursuant to 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. Licensing Within the Commonwealth**

For any license provided pursuant to this Contract, whether to System Software or any other software, the following shall apply. If Authorized User is a state agency, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code of Virginia, the license shall be held by the Commonwealth. If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, the license shall be held by that public body. If Authorized User is a private institution of higher education chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code, the license shall be held by that institution.

**C. Licenses and Permits**

Supplier shall be responsible for obtaining all rights-of-way, licenses, and/or permits required by applicable authorities in order to perform installation Services at the location(s) specified on any order issued pursuant to this Contract.

**D. 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/VITA\\_Main\\_Public/scm/StatutorilyMandatedTsandCs.pdf](http://www.vita.virginia.gov/uploadedfiles/VITA_Main_Public/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/VITA\\_Main\\_Public/scm/eVATsandCs.pdf](http://www.vita.virginia.gov/uploadedfiles/VITA_Main_Public/scm/eVATsandCs.pdf) are also incorporated by reference.

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

**E. 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 an exhibit to this Contract.

**F. 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.

**G. Dispute Resolution**

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

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

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

In the event of any breach by a public body 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 the right to terminate any license or support services hereunder.

#### **H. 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.

#### **I. 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 last 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.

#### **J. No Waiver**

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

#### **K. 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.

**L. Captions**

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

**M. 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.

**N. Survival**

Any provisions of this Contract regarding Software License, Rights To Work Product, Warranty, Escrow, Confidentiality, Content Privacy and Security, Liability, Indemnification, and the General Provisions shall survive the expiration or termination of this Contract.

**O. 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.

**P. 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.

**Q. Right to Audit**

VITA reserves the right to audit those Supplier records that relate to the Contract or any SOWs or orders issued there under. VITA's right to audit shall be limited as follows:

- i. Three (3) years from end date of the Contract;
- ii. Performed at Supplier's premises, during normal business hours at mutually agreed upon times; and
- iii. Excludes access to Supplier cost information. In no event shall Supplier have the right to audit, or require to have audited, VITA or any Authorized User.

**R. Taxes—Federal, State and Local**

The Commonwealth of Virginia is exempt from Federal excise and all State and Local taxes. Such taxes shall not be included in Contract prices. Tax certificates of exemption, Form ST-12 can be obtained online at <http://www.tax.virginia.gov/>. Deliveries against this Contract shall be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K. The Commonwealth is also exempt from paying E-911 charges.

**S. Contract Administration**

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

The Account Manager's responsibilities should include (i) resolution of technical support questions and issues which have not been resolved by Supplier's technical support division; (ii) preparation of account information and response to and resolution of inquiries regarding billing and payment; and (iii) investigation and resolution of customer service issues and complaints.

**T. Entire Contract**

The contract's Exhibits, including all subparts thereof, are attached to this Contract and are made a part of this Contract for all purposes Exhibit A - Pricing

Certification Regarding Lobbying

This Contract, its Exhibits, and any prior non-disclosure agreement constitute the entire agreement between VITA and Supplier and supersede any and all previous representations, understandings, discussions or agreements between VITA and Supplier as to the subject matter hereof. Any and all terms and conditions contained in, incorporated into, or referenced by the Supplier's Proposal shall be deemed invalid. The provisions of the Virginia Department of General Services, Division of Purchases and Supply Vendor's Manual shall not apply to this Contract or any order issued hereunder. This Contract may only be amended by an instrument in writing signed by VITA and Supplier. In the event of a conflict, the following order of precedence shall apply: this Contract document, Exhibit A Pricing and all orders. An Authorized User and Supplier may enter into an ordering agreement pursuant to this Contract. To the extent that such ordering agreement, or any order issued hereunder, includes any terms and conditions inconsistent with the terms and conditions of this Contract, such terms and conditions shall be of no force and effect.

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

Supplier Address for Notice:

Mackay Communications  
3691 Trust Drive  
Raleigh, NC 27616

Attention: (Supplier Contact )

Robert Landtiser

VITA Address for Notice:

VITA-SCM

11751 Meadowville Lane

Chester, VA 23836

Attention: Contract Administrator

**Attachment A**  
**Small Business Subcontracting Plan**

**All small businesses must be certified by the Commonwealth of Virginia, Department of Minority Business Enterprise (DMBE) by the contract award date to participate in the SWAM program. Certification applications are available through DMBE online at [www.dmbv.virginia.gov](http://www.dmbv.virginia.gov).**

**Offeror Name:**           Mackay Communications          

**Preparer Name:** \_\_\_\_\_

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

**Instructions:**

- A. If you are certified by the Department of Minority Business Enterprise (DMBE) as a small business, complete only Section A of this form. This shall not exclude DMBE-certified women, minority or service-disabled veterans-owned businesses when they have received DMBE small business certification.
  
- B. If you are not a DMBE-certified small business, complete Section B of this form.

**Section A**

If your firm is certified by the Department of Minority Business Enterprise (DMBE), are you certified as a (**check only one below**):

- \_\_\_\_\_ Small Business
- \_\_\_\_\_ Small and Women-owned Business
- \_\_\_\_\_ Small and Minority-owned Business
- \_\_\_\_\_ Small Service Disabled Veteran-owned Business

Certification Number: \_\_\_\_\_

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

**Section B**

Populate the table below to show your firm's plans for utilization of DMBE-certified small businesses in the performance of this contract. This shall not exclude DMBE-certified women, minority or service disabled veteran-owned businesses when they have received the DMBE small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.

**Attachment B**  
**State Corporation Commission Form**

**Virginia State Corporation Commission (SCC) registration information. The Bidder:**

is a corporation or other business entity with the following SCC identification number:  
E132848-5 **-OR-**

is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust **-OR-**

is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the bidder in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from bidder's out-of-state location) **-OR-**

is an out-of-state business entity that is including with this bid an opinion of legal counsel which accurately and completely discloses the undersigned bidder's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

**\*\*NOTE\*\*** >> Check the following box if you have not completed any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for bids (the Commonwealth reserves the right to determine in its sole discretion whether to allow such waiver):

**Attachment C**  
**CERTIFICATION REGARDING LOBBYING**

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

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

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

Signature: 

Printed Name: Robert E. Landtiser II

Organization: Mackay Communications

Date: Feb 23, 2015