



Commonwealth of Virginia  
Virginia Information Technologies Agency

**EQUIPMENT & SERVICES FOR WIRELESS DATA SERVICES FOR INTERNET  
ACCESS AND CELLULAR PCS SERVICES**

**CONTRACT NOT VALID FOR NEW ORDERS EFFECTIVE 7/15/09**

**NOTE:**

**THIS CONTRACT IS ONLY VALID FOR EXISTING LINES OF SERVICE EFFECTIVE 7/15/09. ALL LINES NOT SUBJECT TO A CERTIFIED E-RATE FUNDING REQUEST MUST BE TRANSITIONED TO ONE OF VITA'S NEW CONTRACTS BEFORE 11/1/09 OR BE DISCONTINUED.**

Orders for accessories after the initial TSO shall be placed directly with the contractor.

Date: July 22, 2009

Contract #: VA-050818-NEXT

Authorized User: **E-Rate Eligible Public Bodies Only**

Contractor: Nextel Communications of the Mid-Atlantic, Inc.  
d/b/a Nextel Communications, Inc.  
11551 Nuckols Road  
Suite F  
Glen Allen, VA 23059

FIN: 52-1653244

Contact Person: Diane Harding  
804-640-2365 (Cellular)  
804-935-5570 (Fax)  
Fax: 804-935-5570

Trina Koester  
Phone: 757-873-5862  
Fax: 757-873-5801

Term: August 18, 2009 – June 30, 2010

Contract Price List: Shall be posted on Nextel's website

Discounts: Voice & Eligible Data Access – 15%  
Handsets – 39%  
Accessories – 20%

For Additional Contract Information, Please Contact:

Virginia Information Technologies Agency  
Supply Chain Management  
Doug Leslie  
Strategic Sourcing Specialist  
Phone: 804-416-6161  
Email: [doug.leslie@vita.virginia.gov](mailto:doug.leslie@vita.virginia.gov)  
Fax: 804-416-6361

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



**MODIFICATION #3  
TO  
CONTRACT NUMBER VA-050818-NEXT  
BETWEEN THE COMMONWEALTH OF VIRGINIA  
AND  
NEXTEL COMMUNICATIONS OF THE MID-ATLANTIC, INC.**

This MODIFICATION #3 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA", and Nextel Communications of the Mid-Atlantic, Inc. hereinafter referred to as "Contractor", to modify Contract Number VA-050818-NEXT, as previously amended ("Contract"). This Modification is, upon execution by VITA and Contractor, incorporated into and made an integral part of the Contract.

Both of the above referenced parties agree to the following:

**Reference: Page 1 of 24, Section A entitled "Scope of Agreement:"**

Add the following paragraph to the end of Section A:

Beginning on August 18, 2009, Products and Services pursuant to this Contract shall only be available to VITA and to USF participants who have already established Services under this contract and for which they have filed a certified *Services Ordered and Certification Form (Form 471)*, *Funding Request & Certification Form (Form 466)*, or *Internet Service Funding Request & Certification Form (Form 466-A)* with the Universal Service Administrative Company (USAC) prior to the corresponding filing deadline for Funding Year 2009 (July 1, 2009 – June 30, 2010).

**Reference: Page 10 of 24, Section V entitled "Term:"**

The term of Contract VA-050818-NEXT shall be extended from August 18, 2009 through June 30, 2010.

**Reference: Page 22 of 24:**

Insert the following Section BI entitled "Transition of Services" directly after Section BH entitled "USF Fee":

**BI. TRANSITION OF SERVICES**

Contractor shall migrate all lines of Service, procured pursuant to this Contract, for which there is not a certified USAC form 471, 466 or 466-A filed with USAC for Funding Year 2009, off of this Contract. Contractor shall work with each Authorized User to ensure a smooth migration of any affected lines of Service and shall ensure that prior to November 1, 2009, each such line of Service is either migrated to VITA contract # VA-090512-SSI, ported to another carrier, or disconnected.

The foregoing is the complete and final expression of the parties' agreement to modify the Contract and cannot be modified, except by a writing signed by duly authorized representatives of both parties hereto.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

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

NEXTEL COMMUNICATIONS OF THE  
MID-ATLANTIC, INC.

By: *Rita J. Fistere*  
(Signature)

Name: Rita J. Fistere  
(Print)

Title: Director, Contract Management

Date: July 10, 2009

COMMONWEALTH OF VIRGINIA

By: *Doug Leslie*  
(Signature)

Name: Doug Leslie  
(Print)

Title: Strategic Sourcing Consultant

Date: July 15, 2009

Sprint Public Sector Legal — Approved as to Legal Form
WEC — 07/10/2009

**MODIFICATION #2  
TO  
CONTRACT NUMBER VA-050818-NEXT  
BETWEEN THE COMMONWEALTH OF VIRGINIA  
AND  
NEXTEL COMMUNICATIONS OF THE MID-ATLANTIC, INC.**

This MODIFICATION #2 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA", and Nextel Communications of the Mid-Atlantic, Inc. hereinafter referred to as "Contractor", to modify Contract Number VA-050818-NEXT, as previously amended ("Contract"). This Modification is, upon execution by VITA and Contractor, incorporated into and made an integral part of the Contract.

Both of the above referenced parties agree to the following:

**Reference: Page 10 of 24, Paragraph V Entitled "Term:"**

The term of Contract VA-050818-NEXT shall be extended from August 18, 2008 through August 17, 2009.

The foregoing is the complete and final expression of the parties' agreement to modify the Contract and cannot be modified, except by a writing signed by duly authorized representatives of both parties hereto.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

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

NEXTEL COMMUNICATIONS OF THE  
MID-ATLANTIC, INC.

By:   
(Signature)

Name: H. Leon Frazier  
(Print)

Title: Sr. Vice President, Enterprise & Public  
Sector

Date: 1-3-08

COMMONWEALTH OF VIRGINIA

By:   
(Signature)

Name: Doug Leslie  
(Print)

Title: Strategic Sourcing Consultant

Date: 1/4/08

**MODIFICATION #1  
TO  
CONTRACT NUMBER VA-050818-NEXT  
BETWEEN THE  
COMMONWEALTH OF VIRGINIA  
AND  
NEXTEL COMMUNICATIONS OF THE MID-ATLANTIC, INC.**

This MODIFICATION #1 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and Nextel Communications of the Mid-Atlantic, Inc., hereinafter referred to as "Contractor" relating to the modification of the above contract. This Modification #1 is hereby incorporated into and made an integral part of Contract VA-050818-NEXT, as modified.

**Reference: Page 10 of 24, Paragraph V entitled "Term":**

Both of the above referenced parties agree to the following:

The term of Contract VA-050818-NEXT shall be extended from August 18, 2007 through August 17, 2008.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-050818-NEXT and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

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

NEXTEL COMMUNICATIONS OF THE  
THE MID-ATLANTIC, INC.

BY: *Rita Fistere*

NAME: Rita Fistere

TITLE: Director, Contract Negotiations &  
Management, Public Sector

DATE: 07/13/07

COMMONWEALTH OF VIRGINIA

BY: *Doug Crenshaw*

NAME: Doug Crenshaw

TITLE: Strategic Sourcing Manager

DATE: 7/16/07

Sprint Public Sector Legal — Approved as to Legal Form
WEC — 07/12/2007

**MASTER CONTRACT  
CONTRACT VA-0508/8 -NEXT  
BETWEEN  
THE COMMONWEALTH OF VIRGINIA  
AND  
NEXTEL COMMUNICATIONS**

**A. SCOPE OF AGREEMENT**

This is an Agreement (the "Agreement") between the Commonwealth of Virginia, hereinafter referred to as "Commonwealth" or "State" or "Customer" or "VITA" (Virginia Information Technologies Agency) and Nextel Communications of the Mid-Atlantic, Inc., d/b/a Nextel Communications hereinafter referred to as "Contractor" or "Nextel", a Delaware corporation having its principal place of business at 2001 Edmund Halley Drive, Reston, VA 20191. This Agreement contains the Contractual terms and conditions establishing a Master Contract for the use by State Agencies, Institutions, and other public bodies as defined in § 11-37. *Definitions* of the Virginia Public Procurement Act (VPPA), as amended, and hereinafter referred to as "Authorized Users", to acquire Equipment and wireless data services for Internet access and cellular / PCS services ("Services") pursuant to the Commonwealth's Request For Proposal #2005-02R1, dated March 22, 2005 (the "RFP") and the Contractor's proposal, dated April 28, 2005 in response thereto.

**B. INTERPRETATION OF AGREEMENT**

Headings are for reference purposes only and shall not be considered in construing this Agreement.

The documents comprising this Agreement, and their order of precedence in case of conflict, are: (1) all executed Orders and Attachments referencing this Agreement; (2) this document; (3) the Contractor's proposal; and (4) the Commonwealth's RFP. The foregoing documents represent the complete and final Agreement of the parties with respect to the subject matter of this Agreement.

If any term or condition of this Agreement is found to be illegal or unenforceable, it shall be severed, and the validity of the remaining terms and conditions shall not be affected.

Nothing in this Agreement shall be construed as an express or implied waiver of the Commonwealth's sovereign or Eleventh Amendment immunity, or as a pledge of its full faith and credit.

**C. APPLICABLE LAWS AND COURTS**

This solicitation and any resulting Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the circuit courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

#### **D. ANTI-DISCRIMINATION**

By submitting their proposals, Offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §2.2-4311 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, Services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E ).

In every Contract over \$10,000 the provisions in A. and B. below apply:

1. During the performance of this Contract, the Contractor agrees as follows:
  - a) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - b) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
  - c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
2. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

#### **E. ETHICS IN PUBLIC CONTRACTING**

By submitting their proposals, Offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or

inducements from any other Offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, Services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

#### **F. IMMIGRATION REFORM AND CONTROL ACT OF 1986**

By submitting their proposals, Offerors certify that they do not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

#### **G. DEBARMENT STATUS**

By submitting their proposals, Offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on Contracts for the type of goods and/or Services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

#### **H. ANTITRUST**

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or Services purchased or acquired by the Commonwealth of Virginia under said Contract.

#### **I. PAYMENT**

##### **1. To Prime Contractor:**

- a. Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the state Contract number and/or purchase order number; social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

- c. All goods or Services provided under this Contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

- 1) A Contractor awarded a Contract under this solicitation is hereby obligated:
  - (1) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or
  - (2) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
  - (3) The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (b) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

## **J. PRIME CONTRACTOR RESPONSIBILITY**

If the Contractor's proposal includes any goods or Services to be supplied by another party, the Contractor agrees as follows:

1. The Contractor shall act as prime Contractor for the procurement and maintenance of the entire proposed configuration and shall be the sole point of contact with regard to all obligations under this Agreement. The contractor shall be responsible for any acts or omissions of any subcontractor, or its agents or employees for items or services provided pursuant to this Contract.

2. The Contractor hereby represents and warrants that the Contractor has made such other party aware of the proposed use and disposition of the other party's product or Services, and that such other party has agreed in writing that it has no objection thereto.

## **K. TESTING AND INSPECTION**

The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and Services conform to the specifications.

## **L. TAXES**

Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request, and can be obtained online at <http://www.tax.state.va.us/>. Deliveries against this Contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

## **M. INSURANCE**

By signing and submitting a bid or proposal under this solicitation, the bidder or Offeror certifies that if awarded the Contract, it will have the following insurance coverages at the time the Contract is awarded. For construction Contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or Offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

### **INSURANCE COVERAGES AND LIMITS REQUIRED:**

1. Worker's Compensation - Statutory requirements and benefits.
2. Employers Liability - \$100,000.

3. Commercial General Liability - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.
4. Automobile Liability - \$500,000 - Combined single limit.

#### **N. DRUG-FREE WORKPLACE**

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

#### **O. NONDISCRIMINATION OF CONTRACTORS**

A bidder, Offeror, or Contractor shall not be discriminated against in the solicitation or award of this Contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this Contract is made to a faith-based organization and an individual, who applies for or receives goods, Services, or disbursements provided pursuant to this Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, Services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, Services, or disbursements from an alternative provider.

#### **P. CONTRACTUAL DISPUTES**

In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to VITA no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to VITA 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. VITA shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

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

Contractor agrees to submit any and all contractual disputes arising from this contract to VITA's alternative dispute resolution procedures. Contractor may invoke VITA's alternative dispute resolution procedures at any time and concurrently with any other statutory remedies prescribed by the Code of Virginia.

In the event of any breach by the Commonwealth, Contractor'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 Contractor's remedies include the right to terminate any license or support services hereunder.

#### **Q. PERIODIC PROGRESS REPORTS/INVOICES**

For Contracts requiring the submission of periodic Contract performance progress reports or program status reports, the Offeror will include a section on involvement of small businesses and businesses owned by women and minorities. This section will specify the actual dollars Contracted to-date with such businesses, actual dollars expended to-date with such businesses and the total dollars planned to be Contracted for with such businesses on this Contract. This information shall be provided separately for small businesses, minority-owned businesses and women-owned businesses.

If the Contract does not require the submission of periodic progress reports, the Offeror will provide the above required information on actual involvement of small businesses and businesses owned by minorities and women as part of their periodic invoices.

In addition to the above, Contractor must report the monthly dollar value, in U.S. Dollars and rounded to the nearest whole dollar, of all voice and eligible data access sales under this Contract by calendar month. The dollar value of a sale is the price paid by the Authorized User for the Services on an order from VITA as recorded by the Contractor. The Contractor shall provide this report in hard copy to the Controller, VITA, and a copy of the report to Supply Chain Management, VITA within 10 days after the end of each monthly reporting period as defined herein. The report must show each individual Service, type of Service, quantities of Services purchased, and the purchaser (Authorized

User) of the Services. The report is required to be hard copy. VITA may at a later time, agree to an electronic version of the report, however, in lieu of any express agreement by both parties as to the electronic format, the Commonwealth will only accept a hardcopy version. The Contractor shall define "sale" prior to the first reporting period and then shall maintain that definition throughout the term of this Agreement. Sale may be defined as; 1) when the Commonwealth pays the purchase price, or 2) when the Commonwealth accepts the Products or 3) other as defined by the Contractor.

**R. FINAL ACTUAL INVOLVEMENT REPORT**

The Contractor will submit, prior to completion or at completion of the Contract and subject to final payment, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of the Contract. At a minimum, this report shall include for each firm Contracted with and for each such business class (i.e., small, minority-owned, women-owned) the total actual dollars spent on this Contract, the planned involvement of the firm and business class as specified in the proposal, and the actual percent of the total estimated Contract value. A suggested format is as follows:

<u>FIRM NAME</u>	<u>ADDRESS AND</u>	<u>TYPE GOODS/</u>	<u>ACTUAL</u>	<u>PLANNED</u>	<u>% OF TOTAL</u>
<u>PHONE NUMBER</u>	<u>SERVICES</u>	<u>DOLLARS</u>	<u>DOLLARS</u>	<u>CONTRACT</u>	
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
Totals for Business Class			_____	_____	_____

**S. NONVISUAL ACCESS TO TECHNOLOGY**

All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this Agreement:

- (i) effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
- (ii) the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
- (iii) nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public: and

(iv) the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network Services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (I) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, Software, or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access Software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, -2.2-3500 through 2.2-3504 of the Code of Virginia.

#### **T. SECTION 508 COMPLIANCE**

All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any Commonwealth agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended. If requested, the Contractor must provide a detailed explanation of how compliance with Section 508 of the Rehabilitation Act is achieved and a validation of concept demonstration. The requirements of this Paragraph along with the Non-Visual Access to Technology Clause shall be construed to achieve full compliance with the Information Technology Access Act, §§2.2-3500 through 2.2-3504 of the Code of Virginia.

#### **U. UNIVERSAL SERVICE FUND**

The Contractor agrees to make available to all requesting USF participants, all products and Services as listed and priced herein. The Contractor agrees to provide the Products and Services directly to the USF participant, and to bill each USF participant directly. The Contractor 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 said Contract for USF participation shall be the sole responsibility of the Contractor.

The Contractor warrants that it is qualified under applicable Federal Communications Commission and Virginia State Corporation Commission rules to apply for and receive Universal Service Fund allocations/disbursements for Services provided pursuant to this Contract to agencies and entities and users which are eligible for those allocations/disbursements on behalf, and for the benefit, of those agencies and institutions. The Contractor also agrees to maintain those qualifications, and to assist agencies and entities in applying for and receiving these allocations/disbursements.

## **V. TERM**

This Agreement shall take effect on the date of its final execution by both parties, and shall continue for a period of twenty-four (24) months. The Commonwealth at its sole discretion, may extend this Agreement for three (3) additional twelve (12) month periods at the prices identified herein. The Commonwealth will issue a writing in the form of a modification to the Contractor a minimum of thirty (30) days prior to the end of each renewal period for any extension thereafter.

## **W. MODIFICATIONS**

This Contract may be modified in accordance with Section 2.2-4309 of the Code of Virginia. Such modifications may only be made by the representatives noted below. Unless otherwise noted in this section, no modifications to this Contract shall be effective unless it is in writing on paper and signed in ink by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing. For purposes of the Contract, the only authorized representative for the Commonwealth shall be the VITA authorized representative and for the Contractor the person signing the Contract.

The Contractor and VITA further agree that Nextel shall provide a link to Commonwealth of Virginia Pricing Lists for Service, Equipment and Accessories on its Web Site and that Nextel shall maintain these Pricing Lists in a current status. The Commonwealth will receive the discounts contained in this modification from the appropriate pricing lists on the Nextel Web Site.

Any Contract issued on a firm fixed price basis may not be increased more than twenty-five percent (25%) or \$50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee.

## **X. AVAILABILITY OF EQUIPMENT**

The Contractor represents and warrants that all Products were formally announced for marketing purposes before execution of this Agreement or, in the case of subsequent Orders, before execution of such Orders.

## **Y.     **HARDWARE SPECIFICATION****

Each hardware Product shall conform to all specifications published or provided by the Contractor or manufacturer, including but not limited to, physical characteristics, operating characteristics, space requirements, power requirements, and maintenance.

## **Z.     **MANUALS****

Contractor shall supply an operations manual for each Product, and in the case of custom-developed deliverables, shall also provide a manual describing the functions, characteristics and operating capabilities that may be expected of such deliverables.

## **AA.   **LIMITATION OF LIABILITY****

To the maximum extent permitted by applicable law, the Contractor will not be liable under this Contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, Equipment and/or Services delivered under this Contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the Contractor; or (c) circumstances where the Contract expressly provides a right to damages, indemnification or reimbursement.

## **AB.   **PRICE PROTECTION AND MOST FAVORED CUSTOMER****

The Commonwealth shall not pay any costs above those specified in this Agreement or set forth on any Order or Attachment referencing this Agreement. In no event may the amount of any Contract, without adequate consideration, be increased for any purpose.

Any price decrease offered by the Contractor to an authorized user under this Agreement, excluding promotions, effectuated during the Contract period by reason of market change shall be passed on to the Commonwealth of Virginia. This decrease will be effective on the date the price decrease is announced to the general public.

## **AC.   **ASSIGNMENT OF CONTRACT****

To the fullest extent permitted by law, the parties agree that Contractor's rights under this Contract shall not be assignable, in whole or in part, to any other party without the Virginia Information Technologies Agency's (VITA's) written consent, and that any purported assignment or transfer without such consent shall be null and void. If any law limits the right of the parties to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be as follows. The Contractor shall give the VITA authorized representative prompt written notice of the assignment, signed by authorized representatives of both the Contractor and the assignee. This written notice shall be on VITA's "Assignment Notice / Payment Instruction" form and shall provide all

information requested on that form. Copies of the form may be obtained from the Supply Chain management Division, VITA. Upon VITA's acknowledgment of receipt of the properly executed form, the Assignee shall notify the Controller, VITA of the assignment and shall supply the Controller, with a copy of the properly executed form. Any payments made prior to receipt of such notification and form shall not be covered by this assignment.

In the event VITA receives any notice from a third party claiming to be an assignee of any rights of the Contractor under this Contract, Contractor agrees that payment or other performance in respect of those rights shall not be due until at least thirty days after VITA's receipt of the notice required by the above paragraph or receipt of a similarly executed notice confirming the absence or revocation of the purported assignment. The Supply Chain Management Division of VITA shall promptly notify the Contractor of any assignment notice it receives.

#### **AD. TELECOMMUNICATIONS SERVICES ORDER (TSO)**

VITA retains the exclusive authority to order all Services and Equipment delineated herein. The Commonwealth will issue Telecommunications Services Orders (TSOs) to the Contractor for the Services identified herein. To be valid, the TSO must cite the Contract Number identified in Block #1, VITA form 62, and must be signed by an Ordering Officer authorized to bind the Commonwealth contractually for telecommunications Services and Equipment acquired under this Agreement. The TSO must identify the Service(s) and / or Equipment to be acquired, the price for each Service and / or Equipment, and the required Service Commencement Date for each Service or delivery date for Equipment. Accessories ordered with the Equipment may be added to the TSO. Additional accessories ordered after the initial TSO must be ordered by the Authorized User directly from Nextel by one of the method in section AE. ORDERS (ACCESSORIES).

Upon receipt of a TSO via either regular mail, facsimile, or electronically, the Contractor shall process the TSO and return a Service Order identifying the following information within twenty-four (24) hours to the Telecommunications Services Branch of the VITA Customer Care Center (VCCC):

1. A verification that the TSO is technically correct;
2. The date the Services will begin or Equipment will be delivered;
3. A verification of the charge for each item (Service) or Equipment to be provided, and;
4. Other applicable administrative information necessary to deliver the Services and / or Equipment requested on the TSO.

#### **AE. ORDERS (ACCESSORIES)**

Authorized Users may order accessories from directly from Nextel by one of the following methods:

- a. Purchase Order (PO): An official PO form issued by an Authorized User
- b. Charge Card:
  - 1) An ordering and payment process under Contract with American Express (AMEX). Each order must not exceed \$5,000.00 or the then Current charge card limit. Payment will be made to Contractor by AMEX within three business days.
  - 2) Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA, under contract for use by an Authorized User
- c. eVA: An order placed through the eVA electronic procurement website portal at <http://www.eva.state.va.us>

This ordering authority is limited to issuing orders for Accessories. Under no circumstances shall any Authorized User or other entity have the authority to modify this Agreement.

#### **AF. ORDERING OFFICERS FOR EQUIPMENT AND SERVICES**

The following individuals are appointed as authorized Ordering Officers for VITA. The Ordering Officer(s) authority is limited to ordering the Services and / or Equipment as identified herein, by written TSO(s) which reference this Contract, and does not include the ability to add any additional Services and / or Equipment not set forth herein or to change or modify any prices, terms and or conditions agreed upon by the parties hereto. All changes to this Contract must be executed in accordance with section W of this Contract.

The Contractor is hereby notified that the Commonwealth will only make payment only against valid TSOs executed by an authorized Ordering Officer and confirmed by the Contractor. Contractor shall be advised in writing by the VITA authorized representative of any change in the identity of Ordering Officers.

Ordering Officers are Phil Johnson, Linda Brown and Margaret Moran.

#### **AG. TRANSPORTATION AND PACKAGING**

By submitting their proposals, all Offerors certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

**AH. SERVICE COMMENCEMENT DATE**

- a. All Services shall commence within twenty-four (24) hours from the receipt of a Telecommunications Services Order issued by VITA, unless stated otherwise on the TSO.
- b. Any amendment by the COV to this Contract or any part thereof, may require the establishment of a new mutually agreed to service commencement date. The State may delay the service commencement date by notifying the Contractor at least ten (10) days before the required service commencement date.
- c. If the Service(s) are not delivered within the time specified herein, the Commonwealth reserves the right to cancel the award of this Contract or individual Order and/or terminate this Contract for default without further obligation, and award the solicitation to the next responsive and responsible bidder. Contractors are cautioned that failure to deliver the proposed Services as stated in response to a solicitation document may result in removal from VITA's Vendor Registration File as per Section 7.20 of the Department of general Services / Division of Purchases and Supply's Vendor's Manual.
- d. Neither the Contractor nor the Commonwealth shall be responsible for delays resulting from acts beyond the control of each party. These include, but are not limited to, acts of God, riots, acts of war, fire, earthquakes, epidemics, or disasters.

**AI. DELIVERY DATE (EQUIPMENT)**

The Contractor shall deliver the Equipment ready for testing, by the delivery date specified in any executed Attachment or Order referencing the Agreement. If delivery of all Equipment is not completed within fifteen (15) days after the scheduled delivery date, the Commonwealth may cancel either the Agreement or individual Order without further obligation. The Commonwealth may postpone any delivery date by notifying the Contractor at least ten (10) days prior to the delivery date. However, the delivery date shall not be postponed more than a total of thirty (30) days.

Neither the Contractor nor the Commonwealth shall be responsible for delays resulting from acts beyond the control of each party. These include, but are not limited to, acts of God, riots, acts of war, fire, earthquakes, epidemics, or disasters.

**AJ. ACCEPTANCE, TESTING AND COMPLIANCE WITH SPECIFICATIONS**

All Services are subject to inspection and testing by the Authorized User, and any Services, which do not meet or exceed the manufacturer's specifications, or specifications herein, or other requirements of the Contract may be rejected. The Authorized User shall be given seventy-two (72) hours from the date of delivery by the

Contractor to test, evaluate and accept the Services delivered or furnished under this Contract (provided that the Authorized User, in its sole discretion, may accept the same prior to expiration to the seventy-two (72) hour period). If the Contractor's Services fail to meet the Contract specifications or other requirements, including those required by the Contractor's own technical documentation, then the same may be rejected and returned to the Contractor. Such rejection may terminate this Contract and exempt the Authorized User from all costs incurred by the Contractor.

Acceptance shall be effective for the purpose of making payment, however, acceptance by the Authorized User following testing and evaluation during the seventy-two (72) hour period shall not be conclusive that the Services conform in all respects to the Contract specifications and other requirements. In the event that nonconformance therewith is discovered by the Authorized User after acceptance, whether due to a latent defect or otherwise, the Contractor shall take whatever action is necessary to conform the Services to the Contract specifications and other requirements, including but not limited to modification or replacement of the same. The Contractor's failure to do so shall constitute breach of Contract for which the State may exercise the remedies provided in the section herein entitled "Termination and Cancellation," in addition to and not in lieu of any other remedies available under Virginia law.

#### **AK. RECORDS**

The Commonwealth shall maintain appropriate daily records documenting performance during the acceptance period and such records shall be conclusive for purposes of determining acceptance.

#### **AL. BREACH**

The Contractor may be deemed in breach of this Agreement if the Contractor (a) fails to make any Product or Service ready for acceptance testing by the specified delivery date; (b) repeatedly fails to respond to requests for maintenance or other required Service within the time limits set forth in this Agreement; (c) fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten (10) days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a notice identifying such noncompliance; or (d) fails to provide a written response to a notice of noncompliance within ten (10) days after receiving same.

The Contractor shall not be in breach of this Agreement if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Products

or Services. All costs for deinstallation and return of Products and Services shall be borne by the Contractor. In no event shall any failure by the Commonwealth to exercise any remedy available to it be construed as a waiver of or consent to any breach.

**AM. SERVICE DOWNTIME CREDITS**

The Authorized User shall be rebated, or credited, a prorated hourly portion of the applicable monthly Service charges for each occurrence during which the Authorized User is denied use of the Service for eight (8) hours or more during any consecutive thirty (30) day period. The rebate shall apply to the initial eight (8) hours and all additional hours, or portions thereof, during which the Authorized User is denied access to the Service. Contractor provided rebates or credits shall never exceed the cost of the Services.

**AN. RISK OF LOSS**

For any Equipment purchased, the Contractor shall have the risk of loss or damage to all Equipment until clear and unrestricted title to such Equipment is transferred to the Commonwealth.

**AO. TITLE TO EQUIPMENT**

Clear and unrestricted title to all Equipment purchased under this Agreement shall pass to the Commonwealth upon payment of the purchase price.

**AP. ENGINEERING CHANGES**

Contractor sponsored modifications and/or engineering changes shall be made with the consent of the Commonwealth at no additional charge for a period of one (1) year from the date of installation. The Commonwealth reserves the right at all times to schedule these Contractor sponsored modifications and/or changes to minimize the impact on the daily operations of the State.

**AQ. SUPPLIES**

Authorized charges do not include operational supplies (e.g. paper, tape, etc.) unless such supplies are specifically identified in Attachment A. All supplies used by the Commonwealth shall conform to the Contractor's published specifications provided to the Commonwealth at the time of Equipment installation. The Commonwealth reserves the right to acquire such supplies from any Contractor of its choice.

**AR. NON-APPROPRIATION**

All funds for payment of Equipment, Software or Services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the

event of non-appropriation of funds by the Legislature for the items under this Contract, the Commonwealth will terminate this Contract for those goods or Services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate this Contract for goods or Services dependent on such federal funds without further obligation.

#### **AS. CONTRACTUAL RECORDS**

Nextel shall maintain in accordance with applicable law and generally accepted commercial standards all relevant records relating to this Contract for a period of three (3) years following acceptance of final payment under the Contract. All invoices issued from the Contractor to the Commonwealth shall be made available by the Contractor to the Commonwealth and its designated agents for a period of one (1) year after the date of such invoice. The Contractor will also make commercially reasonable efforts to make records older than one (1) year available to the Commonwealth. Upon reasonable prior written notice, Nextel shall make records relating to the Agreement available to the Commonwealth during normal business hours for inspection, examination, or audit. Further, any private accounting or consulting parties acting on behalf or at the direction of the Commonwealth shall be subject to prior approval by Nextel and may be required to execute Nextel's standard Non-Disclosure Agreement prior to examining, inspecting, copying, or auditing Nextel's records.

Contractual records include, but are not limited to, this Agreement and all executed Orders, Attachments, modifications, invoices, and correspondence between the parties to this Agreement.

#### **AT. BILLING DATA**

The Contractor shall provide the Authorized User a consolidated detailed monthly invoice that itemizes all Services, Equipment and / or accessories purchased from the Contract during the prior billing period. The consolidated monthly bill must contain all of the information required herein.

#### **AU. INVOICES**

All invoices shall be rendered promptly to the Authorized User after all Services, Equipment and accessories ordered by the same TSO covered by the invoice have been accepted. All payments for cellular air time shall be monthly in arrears and shall be addressed to the Authorized user. No invoice may include any costs other than those identified in the Agreement or the individual TSO referencing this Contract. Invoices shall provide at a minimum:

1. Type and description of the Service, Equipment, or accessories;
2. Serial number, if any;
3. Charge for each Service, Equipment or accessories;
4. This Contract Number/TSO Number, and;
5. Contractor's Federal Identification Number (FIN)

**AV. VOLUME DISCOUNT**

The parties agree to the following discount rates for Services, Equipment and Accessories purchased from the Agreement:

- a) 15% discount off Service pricing for both voice and eligible data access
- b) 39% discount off handsets
- c) 20% discount off accessories

In addition to these discount rates, which are provided to all Authorized Users of the contract, Nextel shall provide to VITA, quarterly, a sum equal to three percent (3%) of the monthly sales volume on all voice and eligible data access only under the contract.

**AW. TERMINATION FOR CONVENIENCE**

This Contract may be terminated, in whole or in part, upon thirty (30) days advance written notice by the Commonwealth of Virginia. There are no additional costs or financial obligations to the Commonwealth upon termination for convenience.

**AX. TERMINATION FOR CONVENIENCE OF INDIVIDUAL ORDER**

Any individual Order placed under this Agreement may be terminated, in whole or in part, by an Authorized User for its convenience, at any time up to ten (10) days advance written notice to the Contractor. There are no other costs or obligations for termination for convenience.

**AY. CONTRACTOR'S EQUIPMENT WARRANTY POINT-OF-CONTACT**

The Contractor shall provide the Commonwealth with designated points of contact and toll-free telephone numbers for warranty Services.

**AZ. SERVICES WARRANTY**

The parties acknowledge that Nextel does not warrant its wireless services. Wireless services do not perform in precisely the same manner as non-wireless landline telephone services. Wireless coverage and service is impacted by, among other things, terrain, weather and atmospheric conditions, interference, foliage, and man-made structures and, therefore, the quality and availability of service cannot be predicted precisely or guaranteed at all times and in all locations. NEXTEL MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE TO VITA IN CONNECTION WITH ITS USE OF THE SERVICE, CONTENT, AND/OR APPLICATIONS. VITA ACKNOWLEDGES THAT SERVICE DISRUPTIONS WILL OCCUR FROM TIME TO TIME.

Contractor shall deliver and maintain the Services as described herein. In addition, the Contractor shall provide a single point of contact for the reporting of Service problems encountered by the Authorized User. The Contractor shall provide local Service representatives for the reporting of Service problems during normal business hours (8:00 a.m. to 5:00 p.m.), Monday through Friday, excluding state holidays. The Contractor shall also provide an “800” telephone number twenty-four (24) hours per day, seven (7) days per week, including weekends and holidays for the reporting of Service problems during non-business hours.

**BA. WARRANTY (EQUIPMENT)**

The parties acknowledge that Nextel does not manufacture any equipment. Except for any warranties VITA receives from the equipment manufacturer, Nextel makes no warranties or representations of any kind, statutory, express or implied, to VITA or to any other purchaser of the equipment, including any express or implied warranties of merchantability or fitness for a particular purpose. Except for any warranties VITA receives from the equipment manufacturer, there are no warranties that extend beyond the description contained in the manufacturer’s warranties applicable to a given item of equipment. If the equipment proves defective, any costs of necessary servicing and repair will be borne by VITA unless otherwise agreed by Nextel in writing.

VITA acknowledges that all units will automatically be covered under the Nextel Service Plan (Equipment Repair Plan) as defined on the Nextel VITA website until such time as VITA notifies Nextel in writing of a desired change in unit coverage. The cost for this repair service option will be \$.99 per unit per month for those units not excluded by Plan description. VITA agrees the Nextel Service Center staff will determine whether a phone will be repaired or replaced and their decision will be final. All parts used under this Agreement must be new parts or refurbished parts certifiable as new. Parts which have been replaced shall become the property of the Contractor.

## **BB. PRINCIPAL PERIOD OF MAINTENANCE**

The Principal Period of Maintenance (PPM) shall be Monday through Friday, 8 a. m. to 5 p. m., Local Time, Commonwealth holidays excluded. The Contractor must provide a toll free telephone number to a centralized problem reporting and maintenance system that is manned twenty-four (24) hours a day, seven (7) days a week. The Commonwealth, by giving fifteen (15) days written notice to the Contractor, may designate different hours or days for PPM.

## **BC. TECHNOLOGY IMPROVEMENTS**

The Commonwealth recognizes the rapid pace of development in new technology with the need to refresh equipment to accommodate technological change. It is the Commonwealth's intent to actively seek solutions that allow it to retain its investments in current Equipment and Services, while gaining access to the latest developments in technology in the most cost effective manner. In so doing, the Commonwealth seeks to provide Authorized Users with access to Equipment and Services that are representative of the most recent, innovative, and/or proven technologies available.

Therefore, Contractor agrees to provide VITA with written notification of any known hardware, services, firmware, or software changes at least 60 days, or sooner if agreed to by VITA in writing, in advance of any proposed date for implementing such changes that may affect the features, functionality, or method of operation or delivery of any Service or Product offered under this Agreement. Such changes shall take place only after review by VITA, and upon the written mutual agreement of both parties. Upon VITA's request, the Contractor shall promptly provide all documentation needed to evaluate the impact of such changes.

## **BD. PATENT/COPYRIGHT PROTECTION**

Contractor, at its own expense, shall defend any suit brought against the Commonwealth for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Contractor's or Commonwealth's use of any Equipment, Software, materials or information prepared, developed or delivered in connection with performance of this Agreement. In such suit, Contractor shall indemnify the Commonwealth, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit. Nextel shall not indemnify VITA, however, if the claim of infringement is caused by: (1) misuse or unauthorized modification of the Equipment or Service by VITA; (2) failure to use corrections or enhancements made available to VITA by Nextel; (3) use of the Equipment or Service in combination with any product or information not owned or developed by Nextel, unless the claim would have arisen solely from the use of the Equipment or Service without combination with such product or information; (4) VITA's distribution, marketing, or use for the benefit of third parties of the Equipment or Service; or (5) information, direction, specification, or materials provided by VITA.

The purchasing agency shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of Section 2.2-510 and Section 2.2-514 of the Code of Virginia or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

If, any Product or Service becomes, or in the Contractor's opinion, is likely to become, the subject of a claim of infringement, Contractor may, at its option, provide noninfringing substitutes that are satisfactory to the Commonwealth, or at Contractor's option and expense, may obtain the right for the Commonwealth to continue the use of such Product or Service.

If the use of such Equipment or Software by the Commonwealth is prevented by permanent injunction or by Contractor's failure to procure the right for the Commonwealth to continue using the Software, the Contractor agrees to take back the infringing Equipment, Software, materials or information and refund the total amount the Commonwealth has paid Contractor under this Agreement, less one half (1/2%) percent of the total paid for each month of use by the Commonwealth. This obligation is in addition to the obligations cited in the first four subparagraphs above of paragraph AG.

#### **BE. NOTICE REGARDING USE OF SERVICE FOR 911 OR OTHER EMERGENCY CALLS**

The Service provided hereunder does not interact with 911 and other emergency services in the same manner as landline telephone service. Depending on the Authorized User's location and the circumstances and conditions of a particular call, the Service provided hereunder may not be able to identify the Authorized User's telephone number and/or location to emergency services, and the Authorized User may not always be connected to the appropriate emergency services provider. Contractor is deploying wireless Enhanced 911 ("E911") service to help public safety authorities locate Authorized Users of the Service who make 911 calls. However, E911 is not available in all areas, and even in those areas where it is implemented, inherent limitations in this advanced wireless technology prevent it from being 100% reliable. Accordingly, the Commonwealth acknowledges that E911 service is not available in all areas and is not completely reliable.

#### **BF. SERVICE DISRUPTION**

The Contractor's sole liability under this Agreement for service disruption, whether caused by the negligence of the Contractor or otherwise, is limited to a credit allowance not to exceed an amount equal to the proportionate charge to the Commonwealth for the period of service disruption. Except as otherwise set forth in the preceding sentence, in no event is the Contractor liable under this Agreement for indirect,

incidental, special, punitive or consequential damages caused by its negligence or otherwise whether or not such damages are foreseen or unforeseen, nor for economic loss, personal injuries or property damages sustained by Commonwealth or any third parties arising from or relating to service disruption.

**BG. FORCE MAJEURE**

Neither party shall be liable for loss or damage or be deemed to be in breach of the Agreement due to its failure of performance, wholly or in part, under the Agreement if such failure or delay of performance, is due to causes beyond the party's reasonable control or beyond the reasonable control of its subcontractors or agents ("force majeure"), including but not limited to, acts of God, fire, flood, explosion, vandalism, storm or other similar occurrences; any law, order, regulation or request of the United States government or of any government having jurisdiction or of any agency, commission, court or other instrumentality of any one or more of such governments; national emergencies; cable cuts; transmission tower damage; riots; wars; strikes, criminal or malicious act of third parties, lockouts, work stoppages or other such labor difficulties; acts of the local exchange company or other third party beyond the reasonable control of either party. Any delay resulting therefrom shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable.

**BH. USF FEE**

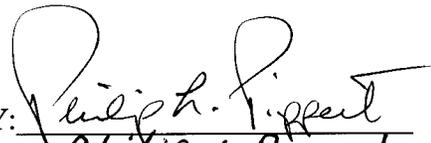
The Commonwealth of Virginia is exempt from certain Federal excise and State and Local taxes; such taxes shall not be included in Contract prices. Tax exemption certificates will be furnished if requested by the Contractor. The Commonwealth agrees to pay the Universal Service Fund (USF) assessment as directed by the Federal Communications Commission (FCC). Nextel will provide the Commonwealth with written notice of any change promulgated by the FCC to the USF assessment.

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

**NEXTEL COMMUNICATIONS OF  
THE MID ATLANTIC, INC.**

**COMMONWEALTH OF VIRGINIA**

BY:   
NAME: H. Leon Frazier  
TITLE: Vice President, Public Sector  
DATE: 9 AUG 05

BY:   
NAME: PHILIP L. PIPPERT  
TITLE: Associate Director  
DATE: 8/18/05

**ATTACHMENT "A"**

**TO  
AGREEMENT VA-050818-NEXT  
FOR THE  
VIRGINIA INFORMATION TECHNOLOGIES AGENCY**

***Product Description and Pricing***

Attachment "A" is hereby incorporated into and made an integral part of Agreement Number VA-050818-NEXT between Nextel Communications of the Mid-Atlantic, Inc., d/b/a Nextel Communications and the Commonwealth of Virginia.

**PRODUCTS AND PRICING**

Nextel shall provide and maintain a link to Commonwealth of Virginia Pricing Lists for Service, Equipment and Accessories on its Web Site. Nextel shall maintain these Pricing Lists in a current status.

**ORDERS**

Authorized Users will order Services, Equipment, and accessories ordered at the same time as Service and Equipment by submitting a Telecommunications Services Request (TSR) to VITA. VITA will order all Services and/or Equipment and accessories ordered at the same time as Services and Equipment by issuing a TSO to Nextel.

**DELIVERY SCHEDULE**

Nextel shall begin service within twenty-four (24) hours of the receipt of a Telecommunications Services Order (TSO) from VITA, or as otherwise stated in the TSO. Equipment and accessories shall be delivered as required by the TSO.

**SHIP TO BILL TO ADDRESSES**

Ship To and Bill To addresses will be contained in the TSO issued by VITA for the Services and / or Equipment and accessories.

**AGENCY POINTS OF CONTACT**

**CONTRACT ADMINISTRATION**

Carmen Holmes  
Supply Chain Management  
(804) 371-5614  
(804) 371-5969 (Fax)  
[Carmen.holmes@vita.virginia.gov](mailto:Carmen.holmes@vita.virginia.gov)

**CONTRACT MANAGEMENT**

Joe Parr  
Supply Chain Management  
(804) 371-5991  
(804) 371-5969  
[joe.parr@vita.virginia.gov](mailto:joe.parr@vita.virginia.gov)

ACCOUNTS PAYABLE

Genevieve Nelson  
Financial Management Services  
(804) 371-5666  
(804) 371-5505

TECHNICAL

Paul Hoppes  
Telecomm and Networking Services  
(804) 371-5580  
[paul.hoppes@vita.virginia.gov](mailto:paul.hoppes@vita.virginia.gov)

**CONTRACTOR POINTS OF CONTACT**

ACCOUNT MANAGEMENT

Diane Harding  
Government Account Manager  
(804)640-2365  
[Diane.harding@nextel.com](mailto:Diane.harding@nextel.com)

CONTRACT MANAGEMENT

Mary Lou Close  
Contracts Manager  
(703) 592-7846  
[MaryLou.Close@nextel.com](mailto:MaryLou.Close@nextel.com)

BILLING DEPARTMENT

Trina Koester  
Specialist, Strategic Care  
(757) 873-5862  
(757) 873-5801 (Fax)  
[Trina.Koester@nextel.com](mailto:Trina.Koester@nextel.com)