NOTICE OF RENEWAL OF CONTRACT

TO: PC MALL GOV
7421 GATEWAY COURT
MANASSAS, VA 20109

DATE ISSUED: JANUARY 24, 2013

CONTRACT NO: 40-11

CONTRACT TITLE: DTS - PERIPHERALS & COTS SOFTWARE

THIS IS A NOTICE OF RENEWAL OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.

This is your notice that the above referenced contract has been renewed. The contract term covered by this Notice of Renewal is effective FEBRUARY 2, 2013 and expires on FEBRUARY 1, 2014.

This is the FIFTH year of a FIVE year contract.

The contract documents consist of the terms and conditions of VITA Contract VA-090202-PCMG including any exhibits attached or amendments thereto.

CONTRACT PRICING:
REFER TO VITA CONTRACT VA-090202-PCMG

ATTACHMENTS:
VITA CONTRACT VA-090202-PCMG

EMPLOYEES NOT TO BENEFIT:
NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

VENDOR CONTACT: JISHNU BANERJEE
TELEPHONE NO.: 800-625-5648 X8334
EMAIL ADDRESS: JISHNUB@PCMALLGOV.COM

VENDOR PAYMENT TERMS: NET 30 DAYS

COUNTY CONTACT: JEFF BRANDT
TELEPHONE NO.: 703-228-7983
EMAIL ADDRESS: JBRANDT@ARLINGTONVA.US

CONTRACT AUTHORIZATION

Mr. Ashley Barnes
Procurement Officer

Date

DISTRIBUTION

VENDOR: 1
BID FOLDER: 2
Commonwealth of Virginia
Virginia Information Technologies Agency

INFORMATION TECHNOLOGY HARDWARE, SOFTWARE & SERVICES
Optional Use

Date: January 4, 2013
Contract #: VA-090202-PCMG

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

Contractor: PCMG, Inc.
7421 Gateway Court
Manassas, VA 20109

FIN: 33-0964088

Contact Person: Jishnu Banerjee
Voice: 800-625-5468 x8334
Fax: 310-630-6434
Email: jishnub@pcmailgov.com

Term: February 2, 2013 – February 1, 2014

Payment: Net 30 days

For Additional Contract Information, Please Contact:
Virginia Information Technologies Agency
Supply Chain Management

Greg Searce
Strategic Sourcing Specialist
Phone: 804-416-6166
E-Mail: gregory.searce@vita.virginia.gov
Fax: 804-416-6361

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

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

VIRGINIA INFORMATION TECHNOLOGIES AGENCY (VITA): Prior review and approval by VITA for purchases in excess of $100,000.00 is required for State Agencies and Institutions only.
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<tr>
<th>Change No.</th>
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<tr>
<td>1</td>
<td>Mod 1 adds additional terms &amp; conditions regarding hard drives and extends contract term</td>
<td>02/02/11</td>
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<tr>
<td>2</td>
<td>Mod 2 extends contract term</td>
<td>02/02/12</td>
</tr>
<tr>
<td>3</td>
<td>Extends contract term</td>
<td>02/02/13</td>
</tr>
<tr>
<td>4</td>
<td>Updated Supplier's name change</td>
<td>01/01/13</td>
</tr>
</tbody>
</table>
December 4, 2012

PC Mall Gov.
Attn: Jishnu Banerjee

Per Section 3.A. ("Term and Termination") of contract VA-090202-PCMG, The Virginia Information Technologies Agency has elected to exercise its option to renew the contract for one year, from February 2, 2013 through February 1, 2014. Should you have any questions, please feel free to contact me.

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

TO: PC MALL GOV
7421 GATEWAY COURT
MANASSAS, VA 20109

DATE ISSUED: JANUARY 31, 2012

CONTRACT NO: 40-11

CONTRACT TITLE: DTS - PERIPHERALS & COTS SOFTWARE

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This is your notice that the above referenced contract has been renewed. The contract term covered by this Notice of Renewal is effective FEBRUARY 2, 2012 and expires on FEBRUARY 1, 2013.

This is the FOURTH year of a possible FIVE year contract.

The contract documents consist of the terms and conditions of VITA Contract VA-090202-PCM including any exhibits attached or amendments thereto.

CONTRACT PRICING:

REFER TO VITA CONTRACT VA-090202-PCM

ATTACHMENTS:

VITA CONTRACT VA-090202-PCM

EMPLOYEES NOT TO BENEFIT:

NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

VENDOR CONTACT: JISHNU BANERJEE

TELEPHONE NO.: 800-625-5648 X8334

EMAIL ADDRESS: JISHNUB@PCMALLGOV.COM

VENDOR PAYMENT TERMS: NET 30 DAYS

COUNTY CONTACT: JEFF BRANDT

TELEPHONE NO.: 703-228-7983

EMAIL ADDRESS: JBRANDT@ARLINGTONVA.US

VENDOR CONTACT: JISHNU BANERJEE

TELEPHONE NO.: 800-625-5648 X8334

EMAIL ADDRESS: JISHNUB@PCMALLGOV.COM

VENDOR PAYMENT TERMS: NET 30 DAYS

COUNTY CONTACT: JEFF BRANDT

TELEPHONE NO.: 703-228-7983

EMAIL ADDRESS: JBRANDT@ARLINGTONVA.US

CONTRACT AUTHORIZATION

Date: 1-31-12

Mr. Ashley Barnes
Procurement Officer

DISTRIBUTION

VENDOR: 1

BID FOLDER: 2
Commonwealth of Virginia
Virginia Information Technologies Agency

INFORMATION TECHNOLOGY HARDWARE, SOFTWARE & SERVICES
Optional Use

Date: February 2, 2011

Contract #: VA-090202-PCMG

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

Contractor: PC Mall Gov
7421 Gateway Court
Manassas, VA 20109

FIN: 33-0964088

Contact Person: Jishnu Banerjee
Voice: 800-625-5468 x8334
Fax: 310-630-6434
Email: jishnub@pcmallgov.com

Term: February 2, 2011 – February 1, 2012

Payment: Net 30 days

For Additional Contract Information, Please Contact:

Virginia Information Technologies Agency
Supply Chain Management

Greg Scearse
Strategic Sourcing Specialist
Phone: 804-416-6186
E-Mail: gregory.scearse@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

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MODIFICATION #1
TO
CONTRACT NUMBER VA-090202-PCMG
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
PC MALL GOV, 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 PC MALL GOV, 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-090202-PCMG (the Agreement), as modified.

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

a.) If the hard drive malfunctions and data can be removed in accordance with the requirements in COV ITRM Standard SEC514-03 the drive may be returned to the Supplier for replacement under warranty or maintenance.

b.) Hard drives that are inoperable and do not allow data to be removed in accordance with the requirements in COV ITRM Standard SEC514-03 shall be physically destroyed using a method previously outlined.

c) Hard drives returned due to non-acceptance after installation and acceptance testing or as a result of any Termination action, Infringement consequence or any other action shall have data removed or hard drives destroyed by the same methods prescribed in a) and b) above.

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

The term of the contract is extended under the same terms for the period beginning February 2, 2011 through February 1, 2012.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-090202-PCMG 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.
PC MALL GOV, INC.
BY: [Signature]
NAME: Cathy Boleyn
TITLE: Vice President, Operations
DATE: January 19, 2011

COMMONWEALTH OF VIRGINIA
BY: [Signature]
NAME: [Signature]
TITLE: CIO OF THE COMMONWEALTH
DATE: 1/31/11
Commonwealth of Virginia
Virginia Information Technologies Agency

INFORMATION TECHNOLOGY HARDWARE, SOFTWARE & SERVICES
Optional Use

Date: February 2, 2011

Contract #: VA-090202-PCM

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

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7421 Gateway Court
Manassas, VA 20109

FIN: 33-0964088

Contact Person: Jishnu Banerjee
Voice: 800-625-5468 x8334
Fax: 310-630-6434
Email: jishnu@pcmallgov.com

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Payment: Net 30 days

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Virginia Information Technologies Agency
Supply Chain Management:

Greg Scarrow
Strategic Sourcing Specialist
Phone: 804-416-6166
E-Mail: gregory.scearce@vita.virginia.gov
Fax: 804-416-6361

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The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-090202-PCMG and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

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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.
PC MALL GOV, INC.

BY: Cathy Baleyn

NAME: Cathy Baleyn

TITLE: Vice President, Operations

DATE: January 19, 2011

COMMONWEALTH OF VIRGINIA

BY: Jane N

NAME: Jane N

TITLE: CIO OF THE COMMONWEALTH

DATE: 1/31/11
Hardware and Maintenance Contract

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

PC Mall Gov, Inc.
HARDWARE AND MAINTENANCE CONTRACT
TABLE OF CONTENTS

1. PURPOSE
2. DEFINITIONS
   A. Acceptance
   B. Authorized Users
   C. Confidential Information
   D. Maintenance Level
   E. Maintenance Coverage Period (MCP)
   F. Maintenance Services (or Maintenance)
   G. Operating Condition
   H. Party
   I. Product
   J. Receipt (of Product)
   K. Requirements
   L. Response Time
   M. Service
   N. Software Publisher
   O. Supplier
   P. System Software
3. TERM AND TERMINATION
   A. Contract Term
   B. Termination for Convenience
   C. Termination for Breach or Default
   D. Termination for Non-Appropriation of Funds
   E. Effect of Termination
   F. Transition of Services
   G. Contract Kick-Off Meeting
   H. Contract Closeout
4. DELIVERY, INSTALLATION AND ACCEPTANCE
   A. Delivery Procedure
   B. Late Delivery
   C. Product Trade-in and Upgrade
   D. Product Installation
   E. Product Acceptance
   F. Cure Period
   G. Product Discontinuation
5. PRODUCT SUPPORT AND ADDITIONAL SERVICES
   A. Authorized User or Third Party Support
      1. Documentation and Support Availability
      2. Timeliness and Price
   B. Engineering Changes and Product Modification
   C. Training
   D. Parts and Maintenance Support
   E. Inventory Record
   F. Product Service Record
   G. Additional Services
6. WARRANTY AND REMEDY
   A. Supplier
   B. Ownership
   C. Supplier Viability
   D. Compatibility
E. Product 12
F. Performance Standards and Mean Time Between Failure 13
G. Warranty Services 13
   1. Product Covered 13
   2. Preventive Maintenance 13
   3. Remedial Maintenance 13
   4. Replacement Parts 13
   5. Spares 13
   6. Notification and Correction of Defects 13
   7. One-year Depot Warranty 14
   8. On-site Warranty 14
   9. System Software Warranty 14
  10. Escalation Procedures 14
  11. Remedies 14
  12. Product Maintenance Services and Renewal Options 15

7. MAINTENANCE SERVICES 15
   A. Ordering 15
   B. Renewal 15
   C. Services 16
      1. Product Covered 16
      2. Preventive Maintenance 16
      3. Remedial Maintenance 16
      4. Replacement Parts 16
      5. Spares 16
      6. Notification and Correction of Defects 16
      7. Advanced Replacement Services 16
      8. On-site Maintenance Services 16
      9. System Software Maintenance 16
     10. Escalation Procedures 17
     11. Remedies 17

8. SCOPE OF USE 17
9. SOFTWARE LICENSE 17
   A. License Grant 18
   B. Limitations on Copying and Disclosure 18
   C. Business Continuity and Recovery 18
   D. Authorized User Compliance 18
   E. No Subsequent, Unilateral Modification of Terms by Supplier ("Shrink Wrap") 18

10. ORDERS AND COMPENSATION 19
    A. Supplier Quote and Request for Quote 19
    B. Orders 19
    C. Purchase Price and Price Protection 20
    D. Supplier-Sponsored Product Promotions 20
    E. Invoice Procedure 20
    F. Purchase Payment Terms 21

11. REPORTING 21
    A. Supplier's Report of Sales and Industrial Funding Adjustment 21
    B. Small Business Participation 22

12. COMPETITIVE PRICING 22
13. CONFIDENTIALITY 22
A. Treatment and Protection 22
B. Exclusions 22
C. Return or Destruction 22
14. INDEMNIFICATION AND LIABILITY 23
   A. Indemnification 23
   B. Liability 24
15. SECURITY COMPLIANCE 24
16. BANKRUPTCY 24
17. GENERAL PROVISIONS 25
   A. Relationship Between VITA and Authorized User and Supplier 25
   B. Incorporated Contractual Provisions 25
   C. Compliance with the Federal Lobbying Act. 25
   D. Governing Law 25
   E. Dispute Resolution 25
   F. Advertising and Use of Proprietary Marks 26
   G. Notices 26
   H. No Waiver 26
   I. Assignment 26
   J. Captions 26
   K. Severability 26
   L. Survival 26
   M. Force Majeure 27
   N. Remedies 27
   O. Right to Audit 27
   P. Offers of Employment 27
   Q. Contract Administration 27
   R. Entire Contract 27
HARDWARE AND MAINTENANCE CONTRACT

THIS HARDWARE AND MAINTENANCE CONTRACT ("Contract") is entered into by and between the Virginia Information Technologies Agency (hereinafter referred to as "VITA"), pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia, and PC Mail Gov, Inc. ("Supplier"), a Delaware corporation headquartered at 7421 Gateway Court, Manassas, VA 20109-7311, to be effective as of February 2, 2009 ("Effective Date").

1. PURPOSE
This Contract sets forth the terms and conditions under which Supplier agrees to sell certain approved manufacturers Product, and to provide various Services to the Authorized Users.

2. DEFINITIONS
A. Acceptance
Acceptance shall take the form of completed and successful acceptance testing in conformance with the Requirements as determined by the Authorized User.

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

C. 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.

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

E. Maintenance Coverage Period (MCP)
The term during which Maintenance is to be provided for a unit of Product.

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

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

H. Party
Supplier, VITA, or any Authorized User.

I. Product
Hardware, peripherals, and any other equipment, including the System Software, all upgrades, all applicable user documentation and related accessories as set forth on Exhibit C provided pursuant to this Contract.
J. Receipt (of Product)
An Authorized User or its Agent has physically received the Product at the correct “ship to” location.

K. Requirements
The functional, performance, operational, compatibility, Acceptance testing criteria and other parameters and characteristics of the Product as set forth in the applicable documentation, Exhibit A and such other parameters, characteristics, or performance standards for the Product that may be agreed upon in writing by the Parties. [Note: In case of conflict, see the Entire Contract clause for order of precedence.]

L. Response Time
The time between Supplier’s receipt of Authorized User’s request for Maintenance and the time Supplier commences repair of the Product.

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

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

O. 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).

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

3. TERM AND TERMINATION

A. Contract Term
This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, shall continue to be effective and legally binding for a period of two (2) years. VITA, at its sole discretion, may extend this Contract for up to three (3) additional one (1) year periods after the expiration of the initial two (2) year period. VITA will issue a written notification to the Supplier stating the extension period, not less than thirty (30) days prior to the expiration of any current term. Warranty on or Maintenance Services for any Product ordered during the term of the Contract may extend beyond the term of this Contract. Performance of an order or SOW issued during the term of this Contract may survive the expiration of the term of this Contract, in which case all terms and conditions required for the operation of such order or SOW shall remain in full force and effect until the Warranty or Maintenance Services pursuant to such order or SOW have met the final Acceptance criteria of the applicable Authorized User.

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

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

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

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

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

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

F. Transition of Services
Prior to or upon expiration or termination of this Contract and at the request of VITA, Supplier shall provide all assistance as VITA or an Authorized User may reasonably require to transition Product-related Services to any other supplier with whom VITA or such Authorized User contracts for provision of Product-related services. This obligation may extend beyond expiration or termination of the Contract for a period not to exceed six (6) months. In the event of a termination for breach and/or default of Supplier, Supplier shall provide such assistance at no charge or fee to VITA or any Authorized User; otherwise, Supplier shall provide such assistance at the hourly rate or a charge agreed upon by Supplier and VITA or an Authorized User.

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

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

4. DELIVERY, INSTALLATION AND ACCEPTANCE

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

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

   B. Late Delivery
   If delivery of all products is not completed by the time specified the Commonwealth may cancel the agreement or any individual order without further obligation. The Commonwealth may postpone delivery date by notifying the Contractor at least 7 days prior to the delivery date.

   Supplier understands that the default delivery schedule for this contract is thirty (30) days from date of order however; alternate delivery schedules may be negotiated at the time of order. For any product that requires a delivery schedule beyond thirty (30) days, Supplier will notify the Authorized End User in advance of the order and provide a date for delivery. That delivery date will be identified in the subsequent Delivery Order. In some cases, Authorized End User may require delivery earlier than thirty (30) days. Should the Supplier commit to an earlier delivery schedule as proposed by the Authorized End User, the revised delivery schedule will be incorporated into the Delivery Order. Supplier hereby acknowledges and agrees that failure to deliver the Product ordered in strict accordance with the agreed upon delivery schedule determined in accordance with this Section shall constitute a material breach of this Contract resulting in possible damages to the ordering Authorized User, the total sum of which would be impracticable or difficult to ascertain as of the Effective Date of this Contract. If the delay lasts longer than thirty (30) days, the Authorized User may immediately cancel the order. Any credit due the Authorized User will be applied to the next periodic invoice.

   In addition, in the event the Supplier fails for any reason to deliver within thirty (30) days of the agreed upon delivery date set forth in the order/schedule, the ordering Authorized User, at its own discretion, may give Supplier oral or written notice of breach. Once notice by such Authorized User is sent or given, the Authorized User may immediately procure the undelivered items or items similar thereto, from another source. Once the Authorized User has effected a
purchase from an alternate source (in accordance with the Virginia Public Procurement Act, §§ 2.2-4300 et seq. of the Code of Virginia), the Authorized User may charge-back Supplier, in which case Supplier agrees to reimburse the Authorized User for any difference in cost between the original contract price and the Authorized User’s cost to cover from the alternate source. In no event shall any Authorized User be held to pay Supplier any costs incurred by Supplier, including but not limited to ordering, marketing, manufacturing, or delivering the item(s) which are subject of such Authorized User’s notice of breach. Notwithstanding the foregoing, the Authorized User reserves any and all other remedies available at law or in equity.

C. Product Trade-in and Upgrade
(To be determined prior to contract execution)

D. Product Installation
Unless otherwise agreed, Supplier shall provide the initial installation of all Product at no additional charge. Installation shall include: unpacking, removal of all shipping/packing materials, positioning, connecting to internal utility services, testing, related necessary services to allow for Acceptance by the Authorized User.

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

E. Product Acceptance
Product shall be deemed accepted when the ordering Authorized User determines that such Product successfully operates in accordance with the Requirements. Such Authorized User shall commence Acceptance testing within fifteen (15) days, or within such other period as set forth in the applicable order, after Receipt/installation of the Product. Acceptance testing will be no longer than fifteen (15) days, or such longer period as may be agreed in writing between Authorized User and Supplier. Supplier agrees to provide to the Authorized User such assistance and advice as the Authorized User may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses incurred which are reimbursable by the Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts. Any such travel expenses must be pre-approved by the Authorized User and shall be reimbursable by such Authorized User at the then-current per diem amounts as published by the Virginia Department of Accounts (http://www.doe.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_Meals_Lodging_102007.pdf, or a successor URL(s)). Authorized User shall provide to Supplier written notice of Acceptance upon successful Acceptance testing. Should Authorized User fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) days following the Acceptance testing period, the Product(s) shall be deemed Accepted.

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

G. Product Discontinuation
During the term of this Contract, if any Product listed on Exhibit C is discontinued and Supplier does not offer a substitute acceptable to VITA, Supplier shall, for each Authorized User who purchased the discontinued Product, continue to meet such Authorized User’s needs for the
discontinued Product for not less than twelve (12) months. Additionally, Supplier shall make available to the Authorized User maintenance parts for discontinued Product for five (5) years from the date of such discontinuation. In every event, Supplier will provide any Authorized User with 120 days advance written notice of its intent to discontinue any Product type previously ordered by such Authorized User.

5. PRODUCT SUPPORT AND ADDITIONAL SERVICES
   A. Authorized User or Third Party Support

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

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

   B. Engineering Changes and Product Modification
      For each Authorized User that purchased Product, Supplier agrees to document and provide to such Authorized User any and all planned engineering changes to the Product ninety (90) days prior to incorporation. All engineering changes which affect the safety of the Product ("Safety Changes") or the ability of the Product to meet the published specifications ("Performance Changes"), shall be made at no cost to the Authorized User. Supplier shall install all Safety Changes and Performance Changes within thirty (30) days after issuance of the engineering change order by the Product manufacturer. If such engineering changes affect Product processing or operating capability, they shall be scheduled at the Authorized User's request as to time and at the Authorized User's option. The Authorized User shall have the option to waive/pre-approve all other engineering changes planned by Supplier on the Product delivered or planned for delivery to the Authorized User.

   C. Training
      Pursuant to a mutually agreed upon schedule, Supplier shall provide sufficient personnel experienced and qualified to conduct such training. Available optional training, and applicable pricing and discounts, are described in Exhibit C.

   D. Parts and Maintenance Support
      Supplier agrees to make available new/certifiable as new spare parts and the Maintenance Services identified in the Maintenance Services section herein and Exhibit D hereto for each Product type ordered by an Authorized User, for five (5) years from the expiration of the initial Warranty Period of the last unit of any given Product type provided by Supplier to such Authorized User. Thereafter, Supplier shall advise such Authorized User of its intent to
discontinue either certain parts or maintenance services for any Product type ordered by the Authorized User. Supplier shall notify the Authorized User one (1) year prior to the effective date of any such discontinuance, and shall provide to the Authorized User the opportunity to purchase spare parts in a quantity adequate to support its installed base. Should Supplier advise the Authorized User of its intent to discontinue certain parts for any Product type ordered by the Authorized User, the Authorized User has the option to request and Supplier has the obligation to provide, all documentation, including source code, required to ensure ongoing support, including full maintenance and repair by the Authorized User or its designated third-party maintenance provider within thirty (30) days prior to the discontinuance date or to replace the unsupported Product with a supported Product at a cost to the Authorized User of no more than the cost delta between the supported Product and the unsupported Product.

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

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

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

Furthermore, Supplier shall, upon request of an Authorized User by means of an order issued in accordance with the ordering provisions of this Contract, provide the following services beyond those identified as warranty or maintenance service offerings: (i) service on equipment not covered by this Contract, (ii) repair of damage or replacement of parts of hardware resulting from changes in the hardware environment, extraordinary use of the hardware, or interconnected devices, or (iii) service outside the applicable hours of service specified in an executed order referencing this Contract. The charge for such services shall be at the hourly rate specified in Exhibit C and shall be inclusive of all expenses. Warranty or maintenance services requested for a unit of hardware within the forty-eight (48) hour period immediately following Remedial Maintenance performed on the same unit of hardware for the same problem, shall not be considered an additional service and shall be provided at no charge. Requests for additional services shall only be approved for payment by the Authorized User when a Product Service Record is included with the applicable invoice.
6. WARRANTY AND REMEDY

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

B. Ownership
Supplier is the owner of the Product or otherwise has the right to grant to the Commonwealth or any Authorized User title to or the right to use the Product provided hereunder without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third-party. Upon receipt of payment, the Commonwealth or the ordering Authorized User, as applicable, shall obtain good and clear title to the Product, excluding the System Software, free and clear of all liens, claims, security interests and encumbrances.

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

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

E. Product
Supplier warrants the following with respect to the Product:

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

ii). The Product shall be free of defects in material, design and workmanship;

iii). Upon delivery, the Product shall be new and in Operating Condition and shall have all released engineering changes released to date already installed;

iv). Each Product delivered hereunder shall function in conformance with the Requirements;

v). No engineering change made to the Product or System Software revisions shall degrade the performance of the Product to a level below that defined in the applicable Request for Proposal, and in the Product manufacturer's published specifications;

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

vii). The System Software shall not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any Authorized User's use of the System Software, nor shall Supplier disable any Authorized User's use of such System Software through remote access or otherwise. If the System Software contains authorization codes allowing access to a data base or other software, Supplier warrants that such codes shall be perpetual and non-expiring.
F. Performance Standards and Mean Time Between Failure
For a period of five (5) years following acceptance of the Product by an Authorized User, Supplier warrants that the Product's performance standards and Mean Time Between Failure (MTBF) standards, calculated based upon such Authorized User's installed base of Supplier Product, shall be at least as good as the standards set forth in Exhibit B. If the Product fails to satisfy (i) the MTBF standards or (ii) the performance standards for that Product type as set forth herein, Supplier shall pay for any and all additional repairs, parts and labor required to bring Product to the appropriate level set forth in Exhibit B, including the cost to retrofit the entire installed Product base. If Supplier fails to so modify or replace the Product so as to achieve the MTBF standards within thirty (30) days, the Authorized User may, at its option, return such Product and receive a full refund during the Product warranty period, or if the warranty has expired, receive a straight line pro-rated refund, by year thereafter for the five (5) year period following installation of the Product.

G. Warranty Services
During the warranty period of one year (1) year, or as specified in the applicable order, Supplier warrants that the Product shall meet or exceed the Requirements. Supplier shall provide warranty services (including unlimited telephonic support and all necessary travel and labor) during the Warranty Period at the prices identified in Exhibit C. Supplier shall correct, at no additional cost to any Authorized User, all errors identified during the warranty period that result in a failure of the Product to meet the Requirements.

Exhibit D provides detailed descriptions of the Supplier’s warranty and maintenance offerings and responsibilities as well as remedies available to the Authorized User in the event Supplier fails to perform its warranty and maintenance obligations. Any remedies shall be paid to the Authorized User on a quarterly basis. Exhibit D defines coverage periods, response times, and restore times. If multiple warranty levels are available, an Authorized User may elect, at any time, an alternative warranty level offered by Supplier. Such amendment shall take effect within thirty (30) days following Supplier’s receipt of Authorized User’s written notice, in the form of a modification to an order.

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

1. Product Covered
   Exhibit D lists all Product types covered under warranty.

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

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

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

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

6. Notification and Correction of Defects
   Supplier’s offerings and responsibilities related to notification and correction of defects, and the Authorized User’s associated remedies, are described in Exhibit D.
7. **One-year Depot Warranty**
Supplier’s depot warranty offerings and responsibilities are described in Exhibit D.

8. **On-site Warranty**
Supplier’s on-site warranty offerings and responsibilities are described in Exhibit D.

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

a) **New Releases**
   Supplier’s responsibilities related to new releases of System Software and Documentation are described in Exhibit D.

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

c) **Response and Restore Times**
   Supplier’s response and restore times related to use, problems, and operation of the System Software, and Authorized User’s associated remedies, are described in Exhibit D.

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

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

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

10. **Escalation Procedures**
   TBD based on Supplier proposal.

11. **Remedies**
   In addition to any remedies described in Exhibit D, if Supplier is unable to make the Product, including System Software, conform, in all material respects to the Requirements, within thirty (30) days following notification by an Authorized User, Supplier shall, at such Authorized User’s request, either (i) replace the non-conforming Product or (ii) accept return of the non-conforming Product and return all monies paid by such Authorized User for the returned Product.
Notwithstanding anything to the contrary in this Contract or in any exhibit hereto, VITA and any Authorized User retain all rights and remedies available at law or in equity.

12. Product Maintenance Services and Renewal Options

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

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

7. MAINTENANCE SERVICES

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

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

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

A. Ordering

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

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

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

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

Co-termination of MCP, TBD based on Supplier proposal.

B. Renewal

At least sixty (60) days prior to the expiration of the MCP for each unit of Product, Supplier shall notify the Authorized User of such expiration, and the Authorized User, at its sole discretion, may issue an order to Supplier to renew Maintenance Services, including System Software Maintenance Services, for an additional one (1) year period. The annual fee for Maintenance Services shall not exceed the fee charged for the preceding year’s Maintenance Services by
more than three percent (3%), or the annual change in CPI, as defined in the Purchase Price and
Price Protection section, in effect at the time, whichever is less. Termination of this Contract or
cancellation of Maintenance Services, including System Software Maintenance Services if
provided as a separate offering from Supplier, by an Authorized User shall not affect this Contract
or the grant of any license pursuant thereto.

C. Services
Maintenance Services shall be as follows:

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

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

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

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

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

6. Notification and Correction of Defects
   Supplier’s offerings and responsibilities related to notification and correction of defects, and
   the Authorized User’s associated remedies, are described in Exhibit D.

7. Advanced Replacement Services
   Supplier’s advanced replacement service offerings and responsibilities are described in
   Exhibit D.

8. On-site Maintenance Services
   Supplier’s on-site maintenance service offerings and responsibilities are described in Exhibit
   D.

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

   a) New Releases
      Supplier’s responsibilities related to new releases of System Software and
      Documentation are described in Exhibit D.

   b) Coverage
      Supplier’s offerings and responsibilities related to coverage for telephonic and written
      consultation in connection with use, problems, and operation of the System Software are
      described in Exhibit D.
c) Response and Restore Times
Supplier's response and restore times related to use, problems, and operation of the System Software, and any associated remedies, are described in Exhibit D.

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

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

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

10. Escalation Procedures
TBD based on Supplier proposal.

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

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

8. 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.

9. SOFTWARE LICENSE
If Authorized User is a state agency, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code of Virginia, the license shall be held by the Commonwealth. If Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity, the license shall be held by that public body.
System Software licensed directly by Supplier

A. License Grant
Supplier hereby grants to the Commonwealth and all Authorized Users a fully paid, perpetual, worldwide, nonexclusive, transferable, irrevocable license to use, and to permit any agent of the Commonwealth or such Authorized User to use, System Software for each Product. Each license granted under this Contract authorizes the Commonwealth or such Authorized User and any agent of the Commonwealth or such Authorized User to use Supplier-licensed programs in machine readable form on any system without limitation. It is expressly understood that "perpetual" license rights shall commence upon delivery of the System Software to the Authorized User and shall exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the Contract. The System Software is the property of Supplier, and no title or ownership of the System Software or any of its parts, including documentation, is transferred to the Commonwealth or the Authorized User.

B. Limitations on Copying and Disclosure
The Commonwealth, an Authorized User, or any agent of the Commonwealth or such Authorized User may make a reasonable number of backup, archival, and disaster recovery copies of the System Software. Any copies of the software or documentation made by the Commonwealth or an Authorized User pursuant to this Contract shall bear all copyright, trademark and other proprietary notices included therein by Supplier and, except as expressly authorized, neither the Commonwealth nor the Authorized User shall distribute same to any third-party without Supplier's prior written consent. The Commonwealth may distribute the System Software and documentation if such distribution is incidental to transfer of Product to which it has taken title. Neither the Commonwealth nor any Authorized User may resell the System Software except if such resale is incidental to the resale of Product to which the Commonwealth or such Authorized User has taken title.

C. Business Continuity and Recovery
Authorized User or its Agent may run the System Software concurrently at a back-up site. In the event that all of an Authorized User's copies of the System Software, including all backup copies, are destroyed, irreparably damaged or otherwise lost due to fire, explosion, sabotage, flood or other natural disaster not occasioned by the fault of such Authorized User, Supplier shall provide to the Authorized User, at no additional cost, a replacement copy of the System Software and documentation; provided however, that nothing contained in this Section shall obligate Supplier to replace or assist in the recovery of data lost concurrent with the loss of the System Software.

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

The following provisions apply to both Option 1 and Option 2.

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

E. No Subsequent, Unilateral Modification of Terms by Supplier ("Shrink Wrap")
Notwithstanding any provision or other unilateral license terms which may be issued by Supplier after the Effective Date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order for System Software licensed under this Contract, or the fact that such other agreement may be affixed to or accompany System Software upon delivery ("shrink wrap"), the terms and conditions set forth herein shall supersede and govern licensing and delivery of all products and services hereunder.
10. ORDERS AND COMPENSATION

A. Supplier Quote and Request for Quote

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

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

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

B. Orders

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

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


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

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

Notwithstanding the foregoing, Supplier shall not accept any order from an Authorized User if such order is to be funded, in whole or in part, by federal funds and if, at the time the order is placed, Supplier is not eligible to be the recipient of federal funds as may be noted on any of the Lists of Parties Excluded from Federal Procurement and Non-procurement Programs.
ALL CONTRACTUAL OBLIGATIONS UNDER THIS CONTRACT IN CONNECTION WITH AN ORDER PLACED BY ANY AUTHORIZED USER ARE THE SOLE OBLIGATION OF SUCH AUTHORIZED USER AND NOT THE RESPONSIBILITY OF VITA UNLESS SUCH AUTHORIZED USER IS VITA.

C. Purchase Price and Price Protection

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

D. Supplier-Sponsored Product Promotions

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

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

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

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

E. Invoice Procedure

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

i). Product or Service type and description

ii). Product serial number, if any
iii). Quantity, charge and extended pricing for each Product and/or Service item
iv). Applicable order date
v). Ship date
vi). Ship-to location contact name
vii). This Contract number and the applicable order number
viii). Supplier's Federal Employer Identification Number (FEIN).
Supplier shall submit separate invoices for the Maintenance charges (detailing the Product types and quantities by Authorized User site), for billable additional services, and for any installation services, including the appropriate Product Service Record or other agreed upon written instrument. Additional invoices may be required by Authorized User from time to time detailing charges for Product at affiliate locations by corporate department.
Any terms included on Supplier's invoice shall have no force or effect and will in no way bind VITA or any Authorized User.

F. Purchase Payment Terms
Supplier is responsible for the accuracy of its billing information. Supplier agrees not to issue invoices hereunder until Product has been accepted. Charges for Product or Services accepted more than ninety (90) days prior to receipt of a valid invoice may not be paid. Should Supplier repeatedly over bill Authorized User, Authorized User may assess a one percent (1%) charge for the amount over billed for each month that such over billing continues.
Product shipped without the applicable Documentation may not meet Acceptance criteria, and payment shall not be due until after the required Documentation is provided.
If there are any disputed items, an Authorized User shall pay all undisputed charges and promptly notify Supplier in writing of any disputed amount. Supplier shall thereupon review its records, and, if it does not concur with the Authorized User, provide the Authorized User with documentation to support the charge. If such charges remain in dispute, such dispute shall be resolved in accordance with the Dispute Resolution section of this Contract. In the absence of the Supplier's written evidence identifying the merit of the disputed amounts, Authorized User may not pay the disputed amounts and may consider the matter concerning the specific identified amounts closed. All payment terms are net 30 days after Acceptance.

11. REPORTING
A. Supplier's Report of Sales and Industrial Funding Adjustment
By the 10th day of every month, the Supplier shall submit the "Supplier Monthly Report of Sales". A template showing the format in which the report is to be submitted and contact information for submission is available at http://www.vita.virginia.gov/uploadedFiles/SCM/SupplierReportofSalesTemplate.xls. The report shall be submitted via electronic mail to the VITA IFA Coordinator and shall report total sales (defined for purposes of this report as all invoiced payments received by Supplier from all Authorized Users) for this Contract during the preceding month. Supplier shall be responsible for submitting the monthly report of sales even if Supplier has had no sales (i.e., a $0.00 total sales value) for the reporting period.
The Supplier shall submit the Industrial Funding Adjustment (IFA) payment for the period covered by such "Supplier Monthly Report of Sales" within thirty (30) days after submitting the "Supplier Monthly Report of Sales". The IFA payment is equal to two percent (2%) of total sales reported during the relevant month.
The IFA payment shall be submitted to VITA, Attention VITA Controller in the form of a check or electronic payment, made payable to the Treasurer of Virginia. The IFA payment shall reference this Contract number, "report amounts", and "report period" and shall be accompanied by a copy of the relevant "Supplier Monthly Report of Sales". Contact information for submission of IFA
payments is available at

Failure to comply with reporting, payment and distribution requirements of this section may result
in default of the Contract.

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

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

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

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

13. CONFIDENTIALITY

A. Treatment and Protection
Each Party shall (i) hold in strict confidence all Confidential Information of any other Party, (ii) use
the Confidential Information solely to perform or to exercise its rights under this Contract, and (iii)
not transfer, display, convey or otherwise disclose or make available all or any part of such
Confidential Information to any third-party. However, an Authorized User may disclose the
Confidential Information as delivered by Supplier to subcontractors, contractors or agents of such
Authorized User that are bound by non-disclosure contracts with such Authorized User. Each
Party shall take the same measures to protect against the disclosure or use of the Confidential
Information as it takes to protect its own proprietary or confidential information (but in no event
shall such measures be less than reasonable care).

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

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

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

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

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

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

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

14. 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 third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, assessments, fines (whether criminal or civil), judgments, settlements, expenses (including attorneys’ and accountants’ fees and disbursements) and costs (each, a “Claim” and collectively, “Claims”), incurred by, borne by or asserted against any of Commonwealth’s Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) any act or omission of any employee, agent, or subcontractor of Supplier (iii) breach of any representation, warranty or covenant of Supplier contained herein, (iv) any defect in the Product or Services, or (v) any actual or alleged infringement or misappropriation of any third party’s intellectual property rights by any of the Product or Services. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to VITA or the Authorized User against whom the claim has been asserted.

In the event that a Claim is commenced against any of Commonwealth’s Indemnified Parties alleging that use of the Product or any Product component or that the provision of Services under this Contract infringes any third party’s intellectual property rights and Supplier is of the opinion that the allegations in such Claim in whole or in part are not covered by this indemnification provision, Supplier shall immediately notify VITA and the affected Authorized User(s) in writing, via certified mail specifying to what extent Supplier believes it is obligated to defend and indemnify under the terms and conditions of this Contract. Supplier shall in such event protect the interests of the Commonwealth’s Indemnified Parties and secure a continuance to permit VITA and the affected Authorized User(s) to appear and defend their interests in cooperation with Supplier as is appropriate, including any jurisdictional defenses VITA or the affected Authorized User(s) may have.

In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party’s intellectual property rights by any of the Product or Services, and in addition to all other obligations of Supplier in this Section, Supplier shall at its expense, either (a) procure for all Authorized Users the right to continue use of such infringing Product or Services, or any component thereof; or (b) replace or modify such infringing Product or Services, or any component thereof, with non-infringing Products or Services satisfactory to VITA. And in addition, Supplier shall provide any Authorized User with a comparable temporary replacement Product or reimburse VITA or any Authorized User for the reasonable costs incurred by VITA or such Authorized User in obtaining an alternative product in the event such Authorized User cannot use the affected Product. If Supplier cannot accomplish any of the foregoing within a reasonable time and at commercially reasonable rates, then Supplier shall accept the return of the infringing component of the Product or Services, along with any other components of any products rendered unusable by any Authorized User as a result of the infringing component, and refund the price paid to Supplier for such components.
B. Liability
Supplier shall have unlimited liability with respect to (i) any intentional or willful misconduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) any act or omission of any employee, agent, or subcontractor of Supplier, (iii) claims for bodily injury, including death, and real and tangible property damage, (iv) Supplier’s indemnification obligations, (v) Supplier’s confidentiality obligations, and (vi) Supplier’s security compliance obligations. Supplier agrees that it is fully responsible for all acts and omissions of its employees, agents, and subcontractors, including their gross negligence or willful misconduct.

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

15. 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#securitySGs) 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, record verification, photographing, and fingerprinting of Supplier’s employees or agents. Supplier may, at any time, be required to execute and complete, for each individual Supplier employee or agent, additional forms which may include non-disclosure agreements to be signed by Supplier’s employees or agents acknowledging that all Authorized User information with which such employees and agents come into contact while at the Authorized User site is confidential and proprietary. Any unauthorized release of proprietary information by the Supplier or an employee or agent of Supplier shall constitute a breach of this Contract.

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 to this Section.

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

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

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

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

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

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

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

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

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

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

In the event of any breach by a public body, Supplier's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Supplier’s remedies include the right to terminate any license or support services hereunder.

F. Advertising and Use of Proprietary Marks
Supplier shall not use the name of VITA or any Authorized User or refer to VITA or any Authorized User, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of VITA or such Authorized User. In no event may Supplier use a proprietary mark of VITA or an Authorized User without receiving the prior written consent of VITA or the Authorized User.

G. Notices
Any notice required or permitted to be given under this Contract shall be in writing and shall be deemed to have been sufficiently given if delivered in person, or if deposited in the U.S. mails, postage prepaid, for mailing by registered, certified mail, or overnight courier service addressed to the addresses shown on the signature page. VITA or Supplier may change its address for notice purposes by giving the other notice of such change in accordance with this Section.

H. No Waiver
Any failure to enforce any terms of this Contract shall not constitute a waiver.

I. Assignment
This Contract shall be binding upon and shall inure to the benefit of the permitted successors and assigns of VITA and Supplier. Supplier may not assign, subcontract, delegate or otherwise convey this Contract, or any of its rights and obligations hereunder, to any entity without the prior written consent of VITA, and any such attempted assignment or subcontracting without consent shall be void. VITA may assign this Contract to any entity, so long as the assignee agrees in writing to be bound by all the terms and conditions of this Contract.

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

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

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

L. Survival
The provisions of this Contract regarding Software License, Warranty, Confidentiality, Liability and Indemnification, and the General Provisions shall survive the expiration or termination of this Contract. In addition, the provisions of this Contract necessary for the use and operation of the Maintenance provisions herein, shall continue in effect through termination of the Maintenance Services ordered pursuant to the Maintenance provisions herein.
M. Force Majeure
No Party shall be responsible for failure to meet its obligations under this Contract if the failure arises from causes beyond the control and without the fault or negligence of the non-performing Party. If any performance date under this Contract is postponed or extended pursuant to this section for longer than thirty (30) calendar days, VITA, by written notice given during the postponement or extension, may terminate Supplier’s right to render further performance after the effective date of termination without liability for that termination, and in addition an Authorized User may terminate any order affected by such postponement or delay.

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

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

ix). Three (3) years from Service performance date;
x). Performed at Supplier’s premises, during normal business hours at mutually agreed upon times; and
xi). Excludes access to Supplier cost information.

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

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

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

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

Exhibit A Request for Proposal
Exhibit B N/A
Exhibit C Prices, Fees, Service Charges and Payment Schedule
Exhibit D Warranty and Maintenance Descriptions
Exhibit E Software Publisher’s EULA, as amended (for reference only)
Exhibit F Certification Regarding Lobbying
Exhibit G Awarded Categories

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

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

VITA and Supplier each acknowledge that it has had the opportunity to review this Contract and to obtain appropriate legal review if it so chose.
Executed as of the last date set forth below by the undersigned authorized representatives of VITA and Supplier.

Supplier
By: ____________________________
(Signature)
Name: Cathy Boleyn
(Print)
Title: Vice President, Business Operations
Date: 1/24/09

VITA
By: ____________________________
(Signature)
Name: James T. Roberts
(Print)
Title: Director Finance & Administration
Date: 2-02-09

Address for Notice:
PC Mall Gov., Inc.
7421 Gateway Court
Manassas, VA 20109-7311
Attention: Contracts Manager

Address for Notice:

Attention: Contract Administrator
## Category 5 - Peripherals

### Minimum Configurations

<table>
<thead>
<tr>
<th>A. Flash Drives</th>
<th>Mfg.</th>
<th>Description</th>
<th>Unit Price</th>
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### B. Monitors (wide aspect)

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<td><strong>19&quot; LCD</strong></td>
<td>Samsung SyncMaster 920NW 19&quot; Superior Quality LCD Monitor 920NW</td>
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<td><strong>21&quot; LCD</strong></td>
<td>Lenovo ThinkVision L200p Wide 20.1&quot; LCD Monitor 44368-B5</td>
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<td>Lenovo ThinkVision L220x Wide 22&quot; LCD Monitor 44331-B2</td>
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**Docking Station**

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<th>Mouse USB</th>
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## Category 5 - Peripherals

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### External USB Floppy Drive

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<td>LaCie LaCie Pocket Floppy Disk Drive</td>
<td>706018</td>
<td>12.00%</td>
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<td>12.00%</td>
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<td><a href="http://www.pcmall.gov.com">www.pcmall.gov.com</a></td>
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### Network Interface Cards

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<td>Belkin BELKIN Gigabit Desktop Network PCI Card</td>
<td>F5D5005</td>
<td>10.00%</td>
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<td><a href="http://www.pcmall.gov.com">www.pcmall.gov.com</a></td>
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<td>SMC SMC</td>
<td>SMC-9452TX-1</td>
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### Optical Mouse

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<td>Logitech Logitech SBF-90 Value Optical Mouse</td>
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<td>Logitech Logitech SBF-96 Optical Wheel Mouse</td>
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<td>LABTECH 800 PS2 USB BLACK/ SILVER OPTICAL SCROLL MOUSE PC</td>
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<td>Adesso AKB-130PS Multimedia Keyboard</td>
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*IPCMG Proprietary/Confidential data intended for use by reviewers only and not intended for disclosure to unintended recipients.*
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**Warranty** is manufacturer's warranty

Units above are base offerings.

*Please provide link to publicly available price list.*
ATTACHMENT B
VA-090202-PCMG PRICING

Discounts are deducted from http://www.pcmallgov.com pricing

### Memory

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**Networking Accessories**

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