



# **Information Technology Hardware, Storage and Peripherals Contract**

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

Dell Marketing, L.P.

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1.

**INFORMATION TECHNOLOGY HARDWARE STORAGE AND PERIPHERALS CONTRACT  
TABLE OF CONTENTS**

<b>1. PURPOSE AND SCOPE</b>	<b>6</b>
<b>2. DEFINITIONS</b>	<b>6</b>
<b>A. Acceptance</b>	<b>6</b>
<b>B. Affiliate</b>	<b>6</b>
<b>C. Authorized Users</b>	<b>6</b>
<b>D. Certified Partner</b>	<b>7</b>
<b>E. Channel Partner</b>	<b>7</b>
<b>F. Claim</b>	<b>7</b>
<b>G. Code</b>	<b>7</b>
<b>H. Commonwealth</b>	<b>7</b>
<b>I. Commonwealth Indemnified Parties</b>	<b>7</b>
<b>J. Computer Virus</b>	<b>7</b>
<b>K. Confidential Information</b>	<b>7</b>
<b>L. Contract</b>	<b>8</b>
<b>M. Contractor</b>	<b>8</b>
<b>N. Deliverable</b>	<b>8</b>
<b>O. Documentation</b>	<b>8</b>
<b>P. Effective Date</b>	<b>8</b>
<b>Q. Federal Tax Information (“FTI”)</b>	<b>8</b>
<b>R. Industrial Funding Adjustment (“IFA”)</b>	<b>8</b>
<b>S. Inventory Record</b>	<b>8</b>
<b>T. Maintenance Coverage Period (“MCP”)</b>	<b>8</b>
<b>U. Maintenance Level</b>	<b>8</b>
<b>V. Maintenance Services</b>	<b>8</b>
<b>W. Party</b>	<b>8</b>
<b>X. Operating Condition</b>	<b>8</b>
<b>Y. Performance Changes</b>	<b>9</b>
<b>Z. Response Time</b>	<b>9</b>
<b>AA. Product</b>	<b>9</b>
<b>BB. Receipt</b>	<b>9</b>
<b>CC. Requirements-</b>	<b>9</b>
<b>DD. Safety Changes</b>	<b>9</b>
<b>EE. Services</b>	<b>9</b>
<b>FF. Statement of Work (“SOW”)</b>	<b>9</b>
<b>GG. Subcontractor</b>	<b>9</b>
<b>HH. Supplier</b>	<b>9</b>
<b>II. Supplier Personnel</b>	<b>9</b>
<b>JJ. Supplier Reporting System (“SRS”)</b>	<b>10</b>
<b>KK. SWaM</b>	<b>10</b>
<b>LL. System Software</b>	<b>10</b>
<b>MM. Third Party Products</b>	<b>10</b>
<b>NN. Transition Out Plan</b>	<b>10</b>
<b>OO. Transition Period</b>	<b>10</b>
<b>PP. Total Sales</b>	<b>10</b>
<b>QQ. Update</b>	<b>10</b>
<b>RR. VITA</b>	<b>10</b>
<b>SS. Warranty Period</b>	<b>10</b>

<b>3. TERM AND TERMINATION</b>	<b>10</b>
A. Contract Term	10
B. Transition of Services	11
C. Continuity of Services	11
D. Termination for Convenience	11
E. Termination for Breach	11
F. Termination for Non-Appropriation of Funds	12
G. Effect of Termination	12
H. Termination by Supplier	12
I. Contract Kick-Off Meeting	12
J. Transition Out Plan	12
K. Contract Closeout	12
<b>4. SUPPLIER PERSONNEL</b>	<b>12</b>
A. Selection and Management of Supplier Personnel	12
B. Key Personnel	13
C. Subcontractors	13
D. Supplier Certified Partner Selection and VITA Approval Rights	13
<b>5. NEW TECHNOLOGY</b>	<b>14</b>
A. Access to New Technology	14
B. New Services Offerings Not Available from Supplier	14
<b>6. GENERAL Representations</b>	<b>14</b>
A. Warranty Disclaimer	14
B. Ownership	14
C. Deliverables	15
D. Malicious Code	15
<b>7. PRODUCT SCOPE OF USE</b>	<b>15</b>
<b>8. SYSTEM SOFTWARE LICENSE Grant</b>	<b>15</b>
A. Reservation of Rights	15
<b>9. [Reserved]</b>	<b>16</b>
<b>10. DELIVERY AND INSTALLATION</b>	<b>16</b>
A. Product and Service Delivery	16
B. Installation of System Software	16
C. Product Delivery Procedure	16
D. Late Delivery of Product	16
E. Product Installation	16
<b>11. ACCEPTANCE</b>	<b>17</b>
A. Services Acceptance Criteria	17
B. Product Acceptance Criteria	17
C. Product and Services Cure Period	17
<b>12. PRODUCT SUPPORT AND ADDITIONAL SERVICES</b>	<b>17</b>
A. Engineering Changes and Product Modification	17
B. Product Discontinuation	18
C. Supplier Buyback Program	18
<b>13. PRODUCT MAINTENANCE SERVICES</b>	<b>18</b>
A. Ordering	18
B. Limitations	18
C. Maintenance Tools and Spare Parts	19
D. Replacements	19
E. Data Responsibility	19
F. Authorized User-Initiated Changes	19
G. Authorized User Responsibilities	19
<b>14. PRODUCT and Services WARRANTY AND REMEDY</b>	<b>19</b>
A. Product Warranty	19

B.	Performance Warranty	20
C.	Escalation Procedures	20
D.	Remedies	21
E.	THE OBLIGATIONS OF SUPPLIER UNDER THIS WARRANTY AND REMEDY SECTION ARE MATERIAL.	21
15.	FEES, ORDERING, AND PAYMENT PROCEDURE	21
A.	Fees and Charges	21
B.	Changes to Fees and Charges	21
C.	Demonstration and/or Evaluation	22
D.	Supplier Quote and Request for Quote	22
E.	Ordering	22
F.	Statement of Work	23
G.	Invoice Procedures	24
H.	Purchase Payment Terms	24
I.	Reimbursement of Expenses	24
J.	Disputed Charges	24
16.	SUPPLIER SPONSORED PROMOTIONS	25
17.	REPORTING	25
A.	Amount of Total Sales	25
B.	Small Business Procurement and Subcontracting Spend	25
18.	SUPPLIER PERFORMANCE MEASURES	26
19.	STATUS MEETINGS	26
20.	POLICIES AND PROCEDURES GUIDE	26
21.	TRAINING AND DOCUMENTATION	26
A.	Training	26
B.	Documentation	27
22.	COMPETITIVE PRICING	27
23.	CONFIDENTIALITY	27
A.	Treatment and Protection	27
B.	Return or Destruction	27
C.	Confidentiality Statement	28
D.	Freedom of Information Act Acknowledgement	28
24.	INDEMNIFICATION	28
A.	Indemnification Generally	28
B.	Indemnification for Intellectual Property Infringement Claims	28
C.	Defense Intellectual Property Claims and Duty to Replace and Reimburse	29
25.	LIABILITY	30
A.	Supplier Liability	30
26.	INSURANCE	30
27.	SECURITY COMPLIANCE	30
28.	IMPORT/EXPORT	31
29.	ACCEPTABLE USE POLICY – if applicable	31
30.	THIRD PARTY TERMS AND CONDITIONS	31
31.	BANKRUPTCY	32
32.	GENERAL PROVISIONS	32
A.	Relationship Between VITA and Authorized User and Supplier	32
B.	Licensing Within the Commonwealth	32
C.	Incorporated Contractual Provisions	32
D.	Compliance with the Federal Lobbying Act	33

<b>E.</b>	<b>Ethics in Public Contracting</b>	<b>33</b>
<b>F.</b>	<b>Governing Law</b>	<b>33</b>
<b>G.</b>	<b>Dispute Resolution</b>	<b>33</b>
<b>H.</b>	<b>Assignment</b>	<b>34</b>
<b>I.</b>	<b>Severability</b>	<b>34</b>
<b>J.</b>	<b>Survival</b>	<b>34</b>
<b>K.</b>	<b>Force Majeure</b>	<b>34</b>
<b>L.</b>	<b>No Waiver</b>	<b>34</b>
<b>M.</b>	<b>Remedies</b>	<b>34</b>
<b>N.</b>	<b>Right to Audit</b>	<b>34</b>
<b>O.</b>	<b>Taxes</b>	<b>35</b>
<b>P.</b>	<b>Currency</b>	<b>35</b>
<b>Q.</b>	<b>Advertising and Use of Proprietary Marks</b>	<b>35</b>
<b>R.</b>	<b>Notices</b>	<b>35</b>
<b>S.</b>	<b>Contract Administration</b>	<b>35</b>
<b>T.</b>	<b>Captions</b>	<b>35</b>
<b>U.</b>	<b>Entire Contract</b>	<b>35</b>
<b>V.</b>	<b>Order of Precedence</b>	<b>36</b>
<b>W.</b>	<b>Counterparts and Electronic Signatures</b>	<b>36</b>
<b>X.</b>	<b>Opportunity to Review</b>	<b>36</b>

## INFORMATION TECHNOLOGY HARDWARE, STORAGE AND PERIPHERALS CONTRACT

THIS INFORMATION TECHNOLOGY Hardware, Storage and Peripherals CONTRACT (“**Contract**”) is entered into by and between the Virginia Information Technologies Agency (“VITA”), pursuant to § 2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia (“**Commonwealth**”), and Dell Marketing L.P. (“**Supplier**”), a limited partnership headquartered at One Dell Way Round Rock, Texas 78682 to be effective as of November 1, 2025 (“**Effective Date**”).

### 1. PURPOSE AND SCOPE

VITA, on behalf of the Commonwealth, is engaging Supplier to provide client computing devices (“**PC, Laptop, Chromebook, and Tablets**”) and storage hardware, server hardware, data protection, peripherals, spare parts, and applicable Services which may include Affiliate and Third-Party Products and Services. This Contract sets forth the terms and conditions under which the Supplier shall provide these products and services to all Authorized Users, as defined below.

This Contract allows for joint and cooperative procurement use, in accordance with Virginia Code §§ 2.2-2012 and 2.2-4304. Such use by other public bodies is not limited to Virginia and shall include other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, the U.S. General Services Administration, or the Metropolitan Washington Council of Governments, or any other entity authorized by applicable law or policy to purchase the goods or services authorized in the contract, provided the using entity executes a participating addendum with Supplier. VITA’s approval is not required for cooperative use, but the using entity and Supplier shall ensure that VITA is aware of such use by providing a copy of the executed participating addendum to VITA. Notwithstanding the preceding sentence, Virginia entities may use this Contract without executing a participating addendum if such use does not require custom terms and the entities are authorized by Virginia Code § 2.2-2012 to purchase from contracts established by VITA.

VITA contracts are mandatory for use by executive branch agencies. VITA contracts are optional use by all other Authorized Users. This Contract is non-exclusive, and all Authorized Users may, at their sole discretion, receive benefits from third party suppliers of services similar to, or in competition with, Services provided by Supplier.

Supplier agrees that, subject to Supplier approval, all non-Virginia authorized entities may purchase the products and services furnished pursuant to this Contract, in accordance with the provisions of this section. Supplier shall include all cooperative purchasing/use in reporting pursuant to section 17 of this Contract.

### 2. DEFINITIONS

Capitalized terms used in this Contract have the meaning as provided (i) where each term is used in the Contract unless the term is (ii) set forth in this “Definitions” section below which lists the capitalized terms used in this Contract and provides a definition for the term.

#### A. Acceptance

The written acknowledgement by the Authorized User of successful Delivery and performance by the Supplier of its contractual commitments at the location(s) designated in the applicable order or Statement of Work (“SOW”), including completed and successful acceptance testing in conformance with the Requirements.

#### B. Affiliate

With respect to Supplier, “Affiliate” means Dell Inc. and its wholly-owned or wholly-controlled subsidiaries.

#### C. Authorized Users

All public bodies, including VITA, as defined by Code § 2.2-4301 and referenced by Code §§ 2.2-4304 and 2.2-2012, authorized to participate in the procurement of information technology under this Contract. Authorized Users include private institutions of higher education chartered in Virginia and granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code that are listed at: <http://www.cicv.org/Our-Colleges/Profiles.aspx>.

Pursuant to Code § 2.2-4304, "Authorized Users" also includes those public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, the U.S. General Services Administration, or the Metropolitan Washington Council of Governments that have executed a participating addendum with the Supplier to utilize this Contract.

**D. Certified Partner**

Any Channel Partner that has been designated by Supplier and authorized by VITA to receive and fulfill orders and or SOWs directly from Authorized Users, as well as invoice and receive payment from Authorized Users.

**E. Channel Partner**

A person or organization that provides services or sells products on behalf of an OEM. Channel partners include, but are not limited to, value-added resellers ("VARs"), systems integrators, managed service providers ("MSPs"), and distributors.

**F. Claim**

Any and all claims, demands, proceedings, suits and actions, including any related direct liabilities, obligations, losses, damages, judgments, settlements, expenses (including reasonable attorneys' fees), and costs. Collectively, "Claims".

**G. Code**

The Code of Virginia, as in effect and amended from time-to-time.

**H. Commonwealth**

The Commonwealth of Virginia.

**I. Commonwealth Indemnified Parties**

The Commonwealth, public bodies of the Commonwealth, VITA, and Authorized Users, together with their respective officers, directors, agents, and employees.

**J. Computer Virus**

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

**K. Confidential Information**

Non-public proprietary or trade secret information of VITA, Supplier, or an Authorized User, whether the information is in written, graphic, machine readable or other tangible form, and which at the time of disclosure to any other Party is either (i) marked as being "Confidential" or "Proprietary"; (ii) information that is protected by statute or other applicable law. In the case of VITA, "Confidential Information" also includes any (a) information to which the Supplier has access in VITA facilities or VITA's systems, (b) Work Product and information pertaining to the Work Product, (c) VITA data, VITA software, and systems access codes, and (d) information concerning VITA's and any other Authorized User's operations, plans, employees, contractors or third-party suppliers.

The term "Confidential Information" does 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.

- L. Contract**  
This agreement, including all exhibits, schedules, and attachments, including any modifications or amendments thereto, entered into by VITA and Supplier.
- M. Contractor**  
The use of the term “Contractor” in any of the following terms, conditions, links, or IRS Publication 1075 means the same as the term “Supplier” as defined and used in this Contract.
- N. Deliverable**  
Products, Third Party Products, or Services as defined in any order or SOW under this Contract.
- O. Documentation**  
The then current, generally available materials (including user manuals, training materials, guides, product descriptions, technical manuals, product specifications, supporting materials and Updates) detailing the information and instructions needed in order to allow any Authorized User and its agents to make use of the Product(s) including System Software and related Services, including any and all components, and to implement and develop self-sufficiency with regard to the Products and Services, including any and all components, provided by Supplier in fulfilling its obligations under the Contract or as may be specified in any order or SOW issued pursuant to this Contract.
- P. Effective Date**  
The date this Contract goes into full force and effect as set forth in the preamble of this Contract above.
- Q. Federal Tax Information (“FTI”)**  
Federal tax returns and federal tax return information (and information derived from it) that is in the possession or control of any Authorized User, which is covered by the confidentiality protections of the Internal Revenue Code (“IRC”) and subject to the IRC § 6103(p)(4) safeguarding requirements including IRS oversight. FTI is categorized as “Sensitive” but “Unclassified” information and may contain personally identifiable information.
- R. Industrial Funding Adjustment (“IFA”)**  
The fee paid by Supplier to VITA to compensate VITA for the cost of procuring and managing the Contract.
- S. Inventory Record**  
A record of all units of Product covered under warranty or maintenance by type, quantity, and location, including the end date for each unit’s warranty period or maintenance term, as applicable.
- T. Maintenance Coverage Period (“MCP”)**  
The period of time during which Supplier is obligated to provide Maintenance Services for a unit of Software or Product.
- U. Maintenance Level**  
The defined parameters of Maintenance Services, including the times during which, and timeframes in which, Supplier shall respond to a request for Maintenance Services. The available Maintenance Levels are defined in Exhibit A of this Contract, or as defined in any order or SOW issued pursuant to this Contract. The actual Maintenance Level for a unit of Product will be set forth in the signed order or SOW for Maintenance Services of that Product referencing this Contract.
- V. Maintenance Services**  
Those Supplier’s standard service offerings for the maintenance and support of the Product or Hardware via Warranty or purchased otherwise.
- W. Party**  
Supplier, VITA, or in the case of a SOW or Order, any Authorized User. Collectively, “Parties”.
- X. Operating Condition**  
The standard condition of the Product that allows it to function in accordance with manufacturer’s specifications, as designed by the Software or Product manufacturer, and, if applicable, in

compliance with any specifications established in the Contract or any order or SOW issued under the Contract.

**Y. Performance Changes**

Any engineering changes that affect the ability of the Product(s) provided by Supplier pursuant to this Contract to meet the published specifications.

**Z. Response Time**

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

**AA. Product**

Supplier-branded or IT hardware, peripherals, including the System Software, OEM proprietary storage Software including all upgrades, all applicable user documentation, and related accessories, as set forth in Exhibit B or as specified in any order or SOW issued pursuant to the Contract.

**BB. Receipt**

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

**CC. Requirements-**

The functional, performance, operational, compatibility, and other parameters and characteristics of the Product(s), Third Party Products, and Service(s), including any and all components, as authorized by any combination of the Contract, as set forth in Exhibit A and www.dell.com/offeringspecificterms or the applicable order or SOW, and such other parameters, characteristics, or performance standards that may be agreed upon in writing by the Parties.

**DD. Safety Changes**

Any engineering changes that affect the safety of the Product(s) provided pursuant to this Contract.

**EE. Services**

Any work performed or service provided by Supplier – including, storage software updates, products, installation, Warranty services, support, testing, training, or other provision of service – in meeting the Requirements and fulfilling Supplier's obligations under the Contract or, as applicable, under any order or SOW authorized by the scope of the Contract. "Services" includes all functions, responsibilities, activities, and tasks of the Supplier that are an inherent, necessary, or customary part of the Services, or are required for the proper performance or provision of the Services.

**FF. Statement of Work ("SOW")**

Any document in substantially the form of Exhibit C (describing the deliverables, due dates, assignment duration, Acceptance criteria, and payment obligations for a specific project, engagement, or assignment that Supplier commits to provide to an Authorized User), which, upon signing by both Parties, is made a part of the Contract.

**GG. Subcontractor**

Any entity to which Supplier (or other Subcontractor of any tier) has subcontracted for performance of, or delegated any of its responsibilities under the Contract, including an affiliate of the Supplier. For the limited purposes of this Contract, this definition does not include Certified Partners.

**HH. Supplier**

The entity set forth in the preamble of this Contract.

**II. Supplier Personnel**

Any and all of Supplier's, Affiliates', or Certified Partners' employees, agents, or contractors if applicable Subcontractors performing under this Contract.

**JJ. Supplier Reporting System (“SRS”)**

The VITA system used by Supplier to fulfill reporting obligations under this Contract. The SRS can be accessed at the following URL(s): <https://www.vita.virginia.gov/procurement/supplier-reporting/>, or any successor URL(s).

**KK. SWaM**

Any entity certified by the Commonwealth’s Department of Small Business and Supplier Diversity (“DSBSD”) as a small, small women-owned, small minority-owned, small service-disabled veteran-owned or microbusiness, as defined in Executive Order Number 35 (2019).

**LL. 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.

**MM. Third Party Products**

Any hardware, software, products, or services that are not “Dell” or “Dell EMC” branded.

**NN. Transition Out Plan**

The written plan developed by Supplier addressing the transition of Supplier’s contractual obligations, in whole or in part, away from the Supplier and to Authorized User, or its designee, after the expiration or termination of the Contract.

**OO. Transition Period**

The period of time after the expiration or termination of the Contract that Supplier is obligated to continue providing assistance to Authorized Users so as to transition the Supplier’s contractual obligations, or any portion thereof, to any other supplier.

**PP. Total Sales**

Sales under this Contract for which Supplier has received full and complete payment from an Authorized User.

**QQ. Update**

Any update, modification, or new release of the Software, System Software, Application, Documentation, or Supplier Product that Software publisher or Supplier makes generally available to its customers at no additional cost. Software Updates may include patches, fixes, upgrades, enhancements, improvements, or access mode, including without limitation additional capabilities to or otherwise improve the functionality, increase the speed, efficiency, or base operation of the Software.

**RR. VITA**

The Virginia Information Technologies Agency, an agency of the Commonwealth of Virginia pursuant to Chapter 20.1 (§§ 2.2-2005 et seq.) of the Code, or any successor agency.

**SS. Warranty Period**

The period of time during which Supplier is to provide corrections, free of charge, for a unit of Product.

**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, will be effective and legally binding for a period of one (1) year (“**Initial Term**”). VITA, in its sole discretion, may renew this Contract for up to five (5) additional one (1) year periods (each a “**Renewal Term**”) after the expiration of the Initial Term (the Initial Term and any Renewal Term(s) constitute, collectively, the “**Contract Term**”). VITA will issue a written notification to the Supplier stating VITA’s intention to exercise a Renewal Term no less than 30 calendar days prior to the expiration of any then-current term. In addition, performance of an order or SOW issued during the Contract Term may survive the expiration of the Contract Term, in which case all contractual terms and conditions required for the operation of such order or SOW will remain in full force and effect until all Services pursuant to such order or SOW have been completed.

**B. Transition of Services**

At the request of an Authorized User prior to or upon expiration or termination of this Contract, Supplier shall provide all reasonable assistance as the Authorized User may reasonably require transitioning the Supplier's contractual obligations, or any portion thereof, to any other supplier with whom the Authorized User contracts for provision of same.

This Transition Period obligation may extend beyond expiration or termination of the Contract for a reasonable period of a time not to exceed twelve (12) months. In the event of a breach, Supplier shall provide such reasonable transition assistance requested by the applicable Authorized User to allow for the expired or terminated portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to Authorized User. The transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to transition assistance. Further, any Transition Period will not affect any Authorized User's rights in regard to any purchased Software perpetual licenses which are paid in full. Supplier reserves the right to charge a fee that is mutually agreed upon by the Supplier and Authorized User for any transition of services required.

**C. Continuity of Services**

In the event that the Initial Term and all Renewal Terms of this Contract expire prior to the award for a successor contract for similar goods or services, the Commonwealth may, with the written consent of the Supplier, extend this Contract for such a period necessary to afford the Commonwealth a continuous supply of the identified goods and/or services until completion of a procurement to succeed this Contract. If there is a conflict between this term and other terms within this Contract, this term shall prevail.

**D. Termination for Convenience**

VITA may terminate this Contract, in whole or in part, at any time and for any reason upon not less than 60 calendar days prior written notice to Supplier. Unless otherwise agreed to on the order or SOW An Authorized User may terminate an order or SOW, in whole or in part, at any time and for any reason upon not less than 60 calendar days prior written notice to Supplier. Any termination under this provision will not affect the rights and obligations attending any order or SOW outstanding at the termination date

**E. Termination for Breach**

In the event of breach by the Supplier, VITA will have the right to terminate this Contract, in whole or in part, and an Authorized User may terminate an order or SOW issued hereunder, in whole or in part. Supplier will be deemed in breach in the event that Supplier fails to meet any material obligation set forth in this Contract or in any order or SOW issued hereunder. Any termination under the provisions of this section will be deemed a "Termination for Breach".

If VITA deems the Supplier to be in breach, VITA shall provide Supplier with notice of breach and allow Supplier 30 business days to cure the breach. If Supplier fails to cure the breach as noted, VITA may immediately terminate this Contract or any order or SOW issued pursuant to this Contract, in whole or in part. If an Authorized User deems the Supplier to be in breach of an order or SOW, that Authorized User shall provide Supplier with notice of breach and allow Supplier 30 business days to cure the breach. If Supplier fails to cure the breach as noted, the Authorized User may immediately terminate its order or SOW, in whole or in part. In addition, if Supplier is found by a court of competent jurisdiction to be in violation of or to have violated 31 U.S.C. § 1352, or if Supplier becomes a party excluded from Federal Procurement and Nonprocurement Programs, VITA may immediately terminate this Contract, in whole or in part, for breach, and VITA shall provide written notice to Supplier of such termination. Supplier shall provide prompt written notice to VITA if Supplier is charged with violation of 31 U.S.C. § 1352, or if federal debarment proceedings are instituted against Supplier. Any termination of the Contract under this provision will not affect the rights and obligations attending any order or SOW outstanding at the termination date.

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

All payment obligations from public bodies under this Contract are subject to the availability of legislative appropriations at the federal, state, or local level for this purpose. In the event of non-appropriation of funds, irrespective of the source of funds, for the items under this Contract, VITA may terminate this Contract, in whole or in part, or any order or SOW, in whole or in part, or an Authorized User may terminate an order or SOW, 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.

**G. Effect of Termination**

Upon termination, neither the Commonwealth, nor VITA, nor any Authorized User will have any future liability except for Deliverables Accepted by Authorized User or Services (including any applicable Maintenance Services) rendered by Supplier and Accepted by the Authorized User prior to the termination date.

In the event of a Termination for Breach, Supplier shall accept return of any Deliverable that was not accepted by the Authorized User, and Supplier shall refund any monies paid by any Authorized User for the unaccepted Deliverable.

**H. Termination by Supplier**

In no instance will termination by Supplier be considered. Failure by an Authorized User to make timely payments owed to Supplier for its performance under this Contract will constitute a breach by that Authorized User. Supplier's remedy for a breach is limited to the remedies set forth in Code § 2.2-4363.

**I. Contract Kick-Off Meeting**

Within 30 calendar days of the Effective Date, Supplier may be required to attend a contract orientation meeting, along with the VITA contract manager/administrator, Authorized User project manager(s) or authorized representative(s), 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.

**J. Transition Out Plan**

If requested by VITA or Authorized User, within three (3) months of the Effective Date of an order, Supplier will develop and distribute to the applicable Authorized User a Transition Out Plan. The Supplier will maintain the Transition Out Plan throughout the Order and update the Transition Out Plan as needed and subject to mutual agreement by the Parties.

**K. Contract Closeout**

Prior to the Contract's expiration date, Supplier may be provided contract closeout documentation by VITA. If contract closeout documentation is provided, then Supplier shall complete, sign, and return to VITA Supply Chain Management any required documentation within 30 calendar days of receipt to ensure completion of closeout administration and to maintain a positive performance reputation with the Commonwealth.

**4. SUPPLIER PERSONNEL**

**A. Selection and Management of Supplier Personnel**

Supplier shall use reasonable commercial efforts to ensure that all Supplier Personnel performing under this Contract are competent and knowledgeable of the contractual arrangements and the applicable order or SOW between Authorized User and Supplier. Supplier acknowledges that Supplier is the employer of all Supplier employees and shall have the sole responsibility to supervise, counsel, discipline, review, evaluate, set the pay rates of, provide (to the extent required by law) health care and other benefits for, and terminate the employment of Supplier employees. Supplier shall be solely responsible for the supervision and conduct of Supplier Personnel, including all acts, omissions, gross negligence, and willful misconduct of Supplier Personnel.

Additionally, Supplier shall use reasonable commercial efforts to ensure that Supplier Personnel comply with the appropriate Authorized User's site security, information security and personnel conduct rules, as well as applicable federal, state and local laws, including export regulations. Authorized User reserves the right to request that Supplier remove from such Authorized User's premises any Supplier Personnel provided such request is not illegal under the circumstances. Further, Supplier shall honor all such requests to remove Supplier Personnel from performance under the Contract provided it is reasonably and commercially practicable. Supplier shall maintain final authority over all Supplier Personnel decisions.

**B. Key Personnel**

Supplier shall designate certain of its personnel as "**Key Personnel**". For the avoidance of doubt, Supplier "**Account Manager(s)**" and Industrial Funding Adjustment "IFA" reporting positions are considered "Key Personnel" under this Contract. Such Key Personnel are considered essential to the performance of Supplier's obligations under this Contract. VITA will have the right to review and approve any persons designated as Key Personnel. Any change to Key Personnel is subject to the written approval of VITA. Failure by Supplier to perform in accordance with these obligations may be deemed a breach of this Contract by VITA, in its sole discretion, the determination of which shall not be arbitrary or capricious. Supplier shall maintain final authority over all personnel decisions.

An Authorized User may, subject to Supplier's written consent, designate certain of Supplier's personnel as "**Project Manager(s)**" in its order or SOW. Supplier's obligations with respect to Project Managers will be described in the applicable order or SOW. Any changes to the Project Manager must be mutually agreed to in writing by Supplier and Authorized User. Supplier shall maintain final authority over all personnel decisions. Failure of Supplier to perform in accordance with such obligations may be deemed a breach of the applicable order or SOW.

**C. Subcontractors**

Supplier may use Subcontractors as long as Supplier has notified Authorized User of their intention to perform its contractual obligations or any order or SOW issued pursuant to the Contract. If an order or SOW issued pursuant to this Contract is supported in whole or in part with federal funds, Supplier may not subcontract to any Subcontractor that is a party excluded from Federal Procurement and Nonprocurement Programs. In no event may Supplier subcontract to any Subcontractor that is debarred by the Commonwealth or that owes back taxes to the Commonwealth and has not made arrangements with the Commonwealth for payment of such back taxes.

If Supplier subcontracts the provision of any performance obligation under this Contract to any other party, Supplier shall (i) act as prime contractor and will be the sole point of contact with regard to all obligations under this Contract; and (ii) affirms that any Subcontractors shall perform in accordance with the applicable terms and conditions, including warranties, set forth in this Contract.

**D. Supplier Certified Partner Selection and VITA Approval Rights**

Supplier may nominate certain of their Channel Partners to perform under this Contract. If an order or SOW issued pursuant to this Contract is supported in whole or in part with federal funds, Supplier may not nominate any Channel Partner that is excluded from Federal Procurement and Nonprocurement Programs. Upon VITA's approval of such nominations as outlined below, approved Channel Partners will be deemed to be Certified Partners for purposes of this Contract. Certified Partners will have the authority to receive and fulfill orders or SOWs directly from Authorized Users, as well as invoice and receive payment from Authorized Users. At all times, Supplier shall be responsible for its Certified Partners' performance in accordance with the terms and conditions, including warranties, set forth in this Contract. Supplier also represents and warrants that any authorized Certified Partners shall perform in accordance with the applicable terms and conditions of this Contract. Further, Supplier will remain directly and fully liable for all actions by its Certified Partners. A list of Supplier's Certified Partners can be found in Exhibit E. Upon request from VITA, the Supplier shall remove any Certified Partner from the list of entities authorized to provide goods and services under this Contract.

Each nominated Channel Partner must be submitted to VITA for approval and Supplier shall provide VITA a comprehensive justification for each Channel Partner nomination, outlining the added value and capabilities that the Channel Partner brings to the Commonwealth. VITA reserves the right to reject any Channel Partner nominated by Supplier based on criteria including, but not limited to, the Channel Partner's past performance, financial stability, compliance with the Commonwealth's procurement policies, and the ability to meet Contract requirements. Should VITA reject the nomination of a Channel Partner, VITA shall notify Supplier in writing of the rejection, detailing the reasons for the rejection of that Channel Partner. Supplier may then submit an alternative Channel Partner for consideration, subject to the same approval process.

Supplier shall ensure that all Certified Partners that qualify as SWaM entities obtain certification from the DSBSD as such SWaM entities, including any Channel Partner nominated to be a Certified Partner after the Effective Date of this Contract. Any amounts paid by Authorized Users to Supplier and/or Certified Partners under this contract are subject to the reporting requirements as set forth in the "Reporting" section of this Contract below, including SWaM spend reporting.

Supplier may add any number of Certified Partners that hold an active SWaM DSBSD certification as a small, small women, small minority, small service-disabled veteran-owned business, or micro business to the contract at any point, provided that Supplier provides evidence of each such Certified Partner's active DSBSD certification.

The number of Channel Partners that do not hold an active SWaM DSBSD certification that can be added to the contract as Certified Partners will be limited to five (5) during the Contract's first year. Additional non-Swam Certified Partners may only be added at contract renewal.

## **5. NEW TECHNOLOGY**

### **A. Access to New Technology**

Supplier will use reasonable commercial efforts to bring to VITA's attention any new products and/or associated services within the scope of the Contract that Supplier believes will be of interest to VITA and will use reasonable commercial efforts to work to develop proposals for the provision of any such products or services as VITA requests.

### **B. New Services Offerings Not Available from Supplier**

If new or replacement product or service offerings become available and cannot be competitively provided by the Supplier under the scope of this Contract, VITA will have the right to purchase the new or replacement products or services from a third party

## **6. GENERAL REPRESENTATIONS**

THE OBLIGATIONS OF SUPPLIER UNDER THIS SECTION ARE MATERIAL.

### **A. Warranty Disclaimer**

Other than the warranties set forth in this sections 6 and 13 and the SOW schedules, and to the maximum extent permitted by applicable law, Supplier and Supplier Affiliates: (i) make no other express warranties; (ii) disclaim all implied warranties, including merchantability, fitness for a particular purpose, title and non-infringement; and (iii) disclaim any warranty arising by statute, operation of law, course of dealing or performance or usage of trade.

### **B. Ownership**

Supplier represents that Supplier has the right to perform and provide all contractual obligations and provide all needed Services, Products, or Third-Party Products without violating any law, rule, regulation applicable to Supplier in its provision of the Products, Third Party Products, or Services. Supplier is the owner of the Product or otherwise has, to the best of its knowledge, the right to grant to the Commonwealth or any Authorized User title or the right to use the Product or Third-Party Product provided pursuant to this Contract. Upon Supplier's receipt of payment, the Commonwealth or ordering Authorized User, as applicable, will obtain good and clear title to the Product or Third-Party Product, excluding the System Software, free and clear of all liens, claims, security interests, and encumbrances.

**C. Deliverables**

- i. All Deliverables provided or delivered pursuant to this Contract are at the current release level unless an Authorized User specifies an older version in its order or SOW.
- ii. No Update, engineering change, or revision made to any Supplier-provided Deliverables will (a) degrade the performance of any Deliverable or its components to a level below that defined in the Requirements or the Product manufacturer's or Software Publisher's published specifications, as applicable; (b) cause any other warranty to be breached; or (c) require an Authorized User to acquire additional hardware equipment or software.

**D. Malicious Code**

To the best of Supplier's knowledge, the Supplier branded software as delivered by Supplier does not contain Computer Viruses ; provided, however, (i) the Dell branded software may include software routines designed to permit Supplier (or other person acting by authority of Supplier) to obtain access to the Authorized User computer system(s) (e.g., remote access) for purposes of the provision of maintenance or technical support; (ii) if a partner has sold the software, the partner may have a software license key/authorization code provided by Supplier in order to enable use of some of the software; and (iii) Supplier may in the future implement license management technology, features and functionality that are included in the Product and described in the applicable documentation that are not covered by the language set forth herein, and such shall not be a violation of this provision. Authorized User remedy for breach of this provision shall be the immediately replacement of all copies of the affected software rightfully in the possession of Authorized User with a copy that does not contain such virus.

**7. PRODUCT SCOPE OF USE**

Any Authorized User may use the Product, and any Software licensed in connection with the 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. If the Commonwealth or an Authorized User takes title under the terms of this Contract to any Products with System Software that is integral to the Products, there will be no restrictions on subsequent resale or distribution of the Products and System Software by the Commonwealth or the Authorized User.

**8. SYSTEM SOFTWARE LICENSE GRANT**

Customer's rights to use the System Software are governed by the applicable end-user license agreement ("EULA"). Unless otherwise agreed, the EULA on [www.dell.com/eula](http://www.dell.com/eula) applies. If such EULA is being provided by Supplier or Supplier Affiliate as licensor, then Supplier shall ensure that a LAA (in format provided in Exhibit F) is executed between Authorized User and applicable licensor. The EULA, along with the LAA, will be added to the order or SOW for that System Software, but will not become a part of this Contract.

As part of its offering pursuant to this Contract, Supplier's Product contains System Software that is licensed from a third-party Software Publisher through an End User Licensing Agreement ("EULA"). In the event that the Software Publisher will not modify the EULA to address those terms and conditions that an Authorized User, as a government entity, cannot accept, then the EULA will be subject to the VITA License Agreement Addendum ("LAA"), the form of which is attached to this Contract as Exhibit F for reference purposes. Supplier shall ensure that any such Software Publisher executes the LAA. The Software Publisher's EULA, along with the LAA executed by the Software Publisher and acknowledged by the Supplier, will be added to the order or SOW for that System Software, but will not become a part of this Contract.

Compliance with the terms and conditions of any license granted pursuant to this Contract is solely the responsibility of the Authorized User that purchased the license or for whom that license was purchased. VITA will have no responsibility for compliance with the terms and conditions of the purchased license, unless VITA purchased the license on its own behalf.

**A. Reservation of Rights**

Nothing contained in this section will be construed to restrict or limit the rights of the Commonwealth or any Authorized User to use any technical data that the Commonwealth or Authorized User may already possess or acquire under proper authorization from other sources.

## 9. [RESERVED]

## 10. DELIVERY AND INSTALLATION

### A. Product and Service Delivery

Supplier shall deliver Products and perform the Services according to the delivery dates set forth on the appropriate order or SOW.

### B. Installation of System Software

Supplier shall ensure that the Product is delivered with the System Software installed in accordance with the Documentation. Supplier shall conduct its standard appropriate diagnostic evaluation to determine that the System Software is properly installed and fully ready for productive use and shall supply the Authorized User with a copy of the results of the diagnostic evaluation promptly after completion of installation.

### C. Product Delivery Procedure

Supplier shall arrange for shipment of the ordered Products F.O.B. destination through a common carrier designated by Supplier with the destination being to the "ship to" address specified in the applicable order or SOW. Supplier will bear all risk of loss to the Product until Delivery. Unless otherwise agreed, all cost of transport insurance on behalf of Authorized User shall be included in the total price stated on the quote. Each shipment must include a packing slip indicating this Contract number, the Authorized User's order number, the SOW number, if applicable, the part number, a description of the Product shipped, and the quantity 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, will pass upon Delivery.

Supplier will make available to Authorized User all appropriate and required Documentation for the Product online. "Delivery" for Product occurs when Supplier provides the Product to Customer's Named Destination.

### D. Late Delivery of Product

Except for Force Majeure events and where common carrier is delayed: Supplier acknowledges and agrees that failure to Deliver the Product ordered in accordance with the agreed upon delivery schedule as set forth in the order will constitute a material breach of this Contract resulting in damages to the ordering Authorized User, the total sum of which would be impracticable or impossible to ascertain as of the Effective Date of this Contract. As an estimate of the minimum amount of damages such Authorized User will suffer, if requested Supplier agrees to credit the Authorized User an amount equal to 4 percent (4%) of the total purchase price for the products not delivered for each week that the Product is undelivered for a period of twenty eight (28) calendar days following the agreed upon Delivery date, or if none specified, following the date order was received by Supplier. In addition to the credit above, if the delay lasts longer than twenty-eight (28) calendar days, the Authorized User may immediately cancel the order and collect as late delivery damages five percent (5%) of the total purchase price for the products not delivered.

In addition, except for Force Majeure events in the event the Supplier fails for any reason to deliver the Product within twenty-eight (28) calendar days of the agreed upon delivery date set forth in the order/schedule, or if no date was specified, following the date the order or SOW was received by Supplier, then the ordering Authorized User, at its own discretion, may give Supplier oral or written notice of breach regarding the subject order or SOW. Once notice by the Authorized User is sent or given, the Authorized User may immediately procure the undelivered items, or substantially similar items, from another source. In no event will 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. Further, the Authorized User reserves any and all other remedies available at law or in equity.

### E. Product Installation

Installations charges shall be in accordance with prices set forth in Exhibit B. Installation will include unpacking, removal of all shipping/packing materials, positioning, connecting to internal utility services, testing, and related necessary services.

All Product installations shall comply with building and facilities standards established by the ordering Authorized User. If Authorized User installs the Product, Supplier shall provide all reasonably necessary telephone assistance.

## 11. ACCEPTANCE

### A. Services Acceptance Criteria

Service(s) will be deemed accepted when the Authorized User determines that the Service(s) meet(s) the Requirements set forth in the applicable order or SOW. Supplier shall ensure any individual Deliverable functions properly with any other Deliverables provided pursuant to the order or SOW. In the event that a previously Accepted Deliverable requires further modification in order to work properly with any other Deliverable, Supplier shall be responsible for all costs associated with the modification.

### B. Product Acceptance Criteria

Authorized User will have 10 days following delivery to inspect, test, and accept or reject the Products and Third-Party Products (the “**Acceptance Period**”)-not including System Software, The Authorized User shall commence Acceptance testing after Delivery of the Product. Acceptance testing will be no longer than ten (10) calendar days, or any longer period as may be agreed in writing between Authorized User and Supplier in the applicable order or SOW. Authorized User shall provide to Supplier written notice of Acceptance upon successful Acceptance testing. In the event that Authorized User fails to provide Supplier written notice of successful or unsuccessful Acceptance testing within ten (10) business days following the end of the Acceptance Period testing period, the Products and Services are deemed to be Accepted. Notwithstanding whether Acceptance is explicit or implied, the Authorized User will retain all rights and remedies under the warranty and product return terms.

Throughout the Acceptance Period, Supplier shall provide to the Authorized User any assistance and advice as the Authorized User may reasonably require. Supplier shall provide this assistance and advice at no additional cost, other than pre-approved travel expenses incurred which are reimbursable by the Authorized User pursuant to the terms and conditions of the “Reimbursement of Expenses” section of this Contract below.

### C. Product and Services Cure Period

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

## 12. PRODUCT SUPPORT AND ADDITIONAL SERVICES

### A. Engineering Changes and Product Modification

The Authorized User will have the option with Supplier agreement to waive or pre-approve all other engineering changes planned by Supplier on the Product delivered or planned for delivery to the Authorized User.

**B. Product Discontinuation**

Dell manages product information based on industry standards and works with vendors such as Intel and Microsoft. Dell shall notify Authorized Users of a product's EOL (end of life) at least six months in advance-if available. If requested by end user, the transition process for customers shall start 60-120 days prior to the products EOL.

Supplier shall handle product stability and lifecycle management through regular updates on product lifecycle status with our customers. Supplier shall do this through ongoing account performance reviews, proactive change notification, and synchronized product transitions.

Supplier will inform VITA and Authorized Users of planned changes in product specifications, platform changes, and product transitions. Supplier will share this information both in scheduled quarterly account reviews and throughout standard business discussions. Supplier will present roadmap information during quarterly reviews with your Dell Account Team and on a case-by-case basis for non-planned changes.

While Supplier does not guarantee hardware support once the product is at end of life (EOL), Supplier intends to provide corrective maintenance services on hardware for a period of five (5) years from the date the product is removed from the price book and enters end-of-life (EOL) status, for customers who hold a valid support contract.

**C. Supplier Buyback Program**

In accordance with Virginia Code § 2.2-1124(B)(16), Authorized Users will have the right to utilize any Supplier programs relating to the buy-back or trade-in of Products offered under this Contract. Supplier shall ensure that any Products returned comply with VITA's data removal standards (SEC 514). The specific parameters and procedures for the return of the Products, data removal, as well as any Supplier fees, credits, or payments, for the buy-back or trade-in service or data destruction, will be set forth in the applicable SOW or order between Supplier and the Authorized User. Supplier must provide certification of destruction to Authorized User if applicable.

**13. PRODUCT MAINTENANCE SERVICES**

Supplier shall provide Maintenance Services (including unlimited telephonic support and all necessary travel and labor) in accordance with Dell's Product Warranty referenced in Section 14 above and the applicable order or SOW. Unless otherwise agreed therein, the initial Maintenance Services procured together with the purchase of a Product start on the commencement date of the applicable warranty period (as specified in Section 14).

Availability of Maintenance Services is governed by Supplier's "End-of-Service-Life" policies, to be made available to Authorized User upon request. Authorized User's designated control organization will 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 or SOW.

**A. Ordering**

See the "Fees, Ordering, and Payment Procedure" section of this Contract below.

**B. Limitations**

Maintenance Services do not cover any of the following: (i) problems that are excluded from warranty coverage according to section G below (Data Responsibility); (ii) problems that cannot be reproduced at Supplier's facility or via remote access to Authorized User's facility; (iii) onsite activities for Product that is located outside of the applicable service area (unless otherwise provided in a Service Description); (iv) providing media replacement, operating supplies, cosmetic accessories or parts such as frames, and cover or support on those items; or (v) repairing damage or defects in Product that are purely cosmetic and do not affect device functionality.

**C. Maintenance Tools and Spare Parts**

Supplier may, at its discretion, store tools and spare parts used by Supplier to perform diagnostic or remedial activities in connection with Products at the Authorized User's site or on Authorized User's systems, and Authorized User agrees that such are for use only by Supplier-authorized personnel and further authorizes Supplier to remove and/or disable them when no longer needed by Supplier to provide its Maintenance Services.

**D. Replacements**

All replaced Product or components thereof shall be returned to Supplier and become the property of Supplier upon receipt of the replaced Product or components at the specified Supplier facility unless specifically agreed otherwise in an order or SOW. So long as Authorized User is adequately notified in advance, if Authorized User does not return a replaced component or Product within 15 days after receipt of Supplier's request, then Authorized User must pay Supplier at the then-current spare parts list price for the Product or portions that Authorized User has failed to return. If Supplier determines that a component of a defective Product is "customer-replaceable", i.e. one that is easily disconnected and reconnected, or if the Supplier determines that the Product should be replaced as a whole, Supplier reserves the right to send Authorized User a component or whole replacement Product for exchange.

**E. Data Responsibility**

Supplier shall not access or use any Authorized User production data stored on the Products, unless Authorized User has expressly authorized Supplier to do so. Unless a data deletion service is expressly ordered from Supplier, Authorized User is responsible for removing all information and data stored on replaced parts, or on any other items or Product before it is returned to Supplier.

**F. Authorized User-Initiated Changes**

If the Product is covered by Maintenance Services and Authorized User intends: (i) to relocate Product to a different installation site (where applicable to the Product); (ii) to change the hardware configuration on its own; or (iii) to deny the activation or to disable remote support features of a Product, Authorized User shall notify Supplier in advance. Where any of such action limits Supplier's ability to provide Maintenance Services for the affected Product or increases the Supplier's cost of providing Maintenance Services, Supplier is entitled to make the continuation of Maintenance Services dependent on Authorized User paying a reasonable adjustment of the ongoing fees and a reasonable charge for any re-certification services Supplier reasonably considers necessary for continued support; agreed upon proactive support capabilities, response times, or other service levels may no longer apply.

**G. Authorized User Responsibilities**

In connection with Maintenance Services, at no charge to Supplier, Authorized User shall: (i) provide Supplier personnel with timely access to appropriate facilities, space, power, documentation, files, data, information, additional software (if needed); (ii) use skilled and Authorized User personnel to assist and cooperate with Supplier in the provision of the Services as reasonably requested by Supplier; (iii) be responsible for physical and network security and all conditions in its business necessary for due performance of Services; (iv) allow Supplier remote and onsite access to the Products and Authorized User's infrastructure environment, as required; and (v) where applicable, promptly notify Supplier when Products fail and provide Supplier with sufficient details of the failure such that the failure can be reproduced by Supplier.

**14. PRODUCT AND SERVICES WARRANTY AND REMEDY**

**A. Product Warranty**

The Product Warranty, including applicable warranty periods, are found at [www.dell.com/learn/us/en/uscorp1/legal\\_terms-conditions\\_dellgrmwebpage/art-limited-hardware-warranties](http://www.dell.com/learn/us/en/uscorp1/legal_terms-conditions_dellgrmwebpage/art-limited-hardware-warranties) and at [www.dell.com/prod-warranty-maint-table](http://www.dell.com/prod-warranty-maint-table). Warranty period for Software will not be less than 90 days. Customer must promptly notify Supplier of any warranty claims within the applicable warranty period.

The Warranty Period will begin upon delivery of the applicable Product.

In addition, Supplier warrants the following with respect to the Product:

The Product will be free of defects in material, and workmanship, and that, upon delivery, the Product will be new and in Operating Condition and will have all engineering changes released to date already installed. Unless provided otherwise in a Schedule, additional terms governing the limited warranties for Product are found at <https://www.dell.com/learn/us/en/uscorp1/terms-of-sale-commercial-and-public-sector-warranties?c=us&l=en&s=corp> or in the applicable documentation or Product Notice for the specific Product. Supplier's entire liability for a breach of this warranty shall be for Supplier to repair or to replace the affected Product at Authorized User's request provided that such request is commercially reasonable, and, if Supplier is unable to effect such within a reasonable time, then Supplier will refund the amount Authorized User paid for the affected Product as depreciated on a straight-line basis over a 5 year period, upon return of such Product to Supplier. Supplier shall pass through any warranties on Third Party Products to VITA and Authorized Users.

**B. Performance Warranty**

Supplier will perform Services in a workmanlike manner in accordance with generally accepted industry standards. Authorized User must notify Supplier of any failure to so perform within 10 days after the date on which such failure first occurs. In such case, Supplier will use reasonable efforts to correct such failure within a reasonable period of time. If, after reasonable efforts, Supplier is not able to correct such deficiencies for reasons for which Supplier is responsible, then Authorized User may terminate the affected Services for cause by providing written notice to Supplier.

With respect to Supplier's performance under this Contract:

- i. Supplier warrants that Supplier and **its Certified Partners** shall perform the Services in accordance with generally accepted industry standards currently recognized in Supplier's profession, and Supplier shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all plans, information, specifications, Deliverables, and Services furnished under this Contract; and
- ii. Supplier shall ensure that any contractually obligated Services or Deliverables, or both, meet or exceed the Requirements and that any Product will function in conformance with the Requirements. Supplier will provide online documentation to the Authorized User at [www.dell.com/support](http://www.dell.com/support).
- iii. During the Warranty Period of three (3) years or as specified in the applicable order or SOW, Supplier warrants that any Services and Deliverables provided by Supplier under this Contract will meet or exceed the Requirements.

The Warranty Period will begin at the Acceptance date of the applicable Service or Deliverable.

Any additional warranties, service levels, or performance agreements beyond those set forth herein may be addressed in an order or SOW between an Authorized User and Supplier.

**C. Escalation Procedures**

Beginning with VITA's assigned Dell Technologies Account Team, including its Account Executive and Inside Sales Representative, Supplier shall provide a well-defined escalation path for customer satisfaction issues.

Supplier's account team assigned to VITA and Authorized Users under this Contract will manage procurement, pricing, or supply issues that may arise. The team has a clearly defined escalation path for issues which includes routing them through a Sales Manager, up through to the appropriate Regional Sales Director. The Dell Technologies Team is directly accountable to VITA and will keep VITA or Authorized Users apprised of issue resolution and progress.

For support issues, VITA can escalate to by contacting IT product support. Customers that use ProSupport Plus can contact their TAM (technical account manager).

In the rare case an issue cannot be resolved through standard channels; the escalation process would be directed to the level of Sales Vice President.

**D. Remedies**

In addition to any remedies described in Exhibit I, if Supplier is unable to make the Product, including System Software, conform, in all material respects to the Requirements, within thirty (30) calendar 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) calendar 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 Services for a period of one (1) year and for the annual fee identified in Exhibit B. Supplier warrants that it shall make Maintenance Services available for all the Products, including System Software, listed in Exhibit B, or which are components of Products listed in Exhibit B, 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.

**E. THE OBLIGATIONS OF SUPPLIER UNDER THIS WARRANTY AND REMEDY SECTION ARE MATERIAL.**

Unless otherwise agreed, the warranties set forth in this Section do not cover problems that arise from: (i) accident or neglect by Authorized User or any third party; (ii) any third party items or services with which the Product is used or other causes beyond Supplier's control; (iii) installation, operation or use not in accordance with Supplier's instructions and the applicable documentation; (iv) use in an environment, in a manner or for a purpose for which the Product was not designed; (v) modification, alteration or repair by anyone other than Supplier Personnel unless otherwise authorized by Supplier; or (vi) causes attributable to normal wear and tear. Supplier has no obligation for: (1) Software installed or used beyond the licensed use, or (2) Product whose original identification marks have been altered or removed. Products and Services are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, such as any application in which the failure of the Products or Services could lead to death, bodily injury, or physical or property damage (collectively, "High-Risk Activities"). Supplier expressly disclaims any express or implied warranty of fitness for High-Risk Activities.

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

**A. Fees and Charges**

In consideration for the Supplier's performance obligations under this Contract, an Authorized User shall pay Supplier the fee(s) owed pursuant to the schedule of fees and charges as set forth on Exhibit B attached to this Contract. Supplier will only be entitled to those fees owed for Supplier's performance obligations and any additional Products and Services provided to an Authorized User in accordance with the scope of this Contract and the Requirements, as authorized by Exhibit A, and per the Authorized User's order or SOW. The fees, and any associated discounts, will be applicable throughout the Contract Term unless modified pursuant to the terms and conditions below.

**B. Changes to Fees and Charges**

Supplier and VITA will work in good faith to agree on an appropriate change in pricing. Supplier agrees to offer price reductions to ensure compliance with the "Competitive Pricing" section of this Contract below. In the event the fees or discounts apply for any period less than the entire Contract Term, no increase in the fees will be allowed during the first twelve (12) month period following the Effective Date and no increase in fees will be allowed more than once in any subsequent twelve (12) month period thereafter.

Beginning 12 months after the Effective Date, any increase in fees will 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, All Items, Not Seasonally Adjusted, as published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/cpi/home.htm>) for the period ending 60 to 90 days prior to the effective date of the increase compared with the same index one (1) year prior. Supplier must submit any change in price in writing to an Authorized User if the change impacts any order or SOW and, in accordance with the above, such change will not become effective for 60 calendar days thereafter.

**C. Demonstration and/or Evaluation**

If permitted by the System Software Publisher, and at the request of any Authorized User, the Supplier shall perform a reasonable demonstration of its Products at the Authorized User's location and at no charge.

If permitted by the System Software Publisher, then the Supplier shall provide the Software to any Authorized User for evaluation purposes at no charge. The evaluation period will be determined by the complexity of testing but will be a period not less than 30 calendar days. Each new project is entitled to an evaluation copy regardless of whether an Authorized User has previously purchased the Software.

**D. Supplier Quote and Request for Quote**

Authorized User may, at its sole discretion, issue a request for quote ("RFQ") for any combination of the Solution, Product, or Services provided under this Contract. If responding to an RFQ, Supplier shall respond to the RFQ by providing a written quote. Supplier's quote shall include and/or have attachments and or links to (a) a detailed description of System Software, Product or service proposed, including any applicable components, at the Exhibit B line-item level; (b) the quantity of each such component; (c) the total contract price; (d) the percentage discount offered; (e) an extended price; and (f) a timeframe specifying how long the quote remains valid. If requested by the Authorized User, Supplier's quote must also include a detailed description of the approach Supplier plans to take in developing, implementing, and maintaining its offering pursuant to the RFQ for the Authorized User. If Supplier is unable to respond to the RFQ, Supplier shall notify the Authorized User in writing of its inability to perform the work requested by the Authorized User, and provide the reasons for its inability to perform, prior to the due date for the submission of quotes in response to the RFQ. Competitive Request for Quotes

If an Authorized User determines that a competitive process is required to ensure it receives the best value for any combination of its needed Solution, Product, or Services under this Contract, then the Authorized User may, at its sole discretion, use a Competitive Request for Quote ("CRFQ") process to obtain identical or similar Solutions, Products, or Services to those provided by Supplier pursuant to this Contract. The CRFQ will clearly outline the project timing and requirements. If the Authorized User is not able to identify the exact specifications required, then the CRFQ respondents will be given the opportunity to identify and propose their recommended specifications.

**E. Ordering**

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

All Authorized Users have the right to license or purchase Supplier's products or services under this Contract but have no obligation to purchase or license 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.

1. Supplier shall accept any order or SOW placed by an Authorized User through the Commonwealth's electronic procurement website portal, eVA (<http://www.eva.virginia.gov/>). Agencies, as defined by Code § 2.2-2006, and legislative, judicial, and independent agencies of the Commonwealth, must order through eVA.

2. All other Authorized Users are encouraged to order through eVA, but may order through the following means:
  - i. Purchase Order (“**PO**”): An official PO form issued by an Authorized User.
  - ii. Any other order payment charge or credit card process, such as ordering and paying by AMEX, MASTERCARD, or VISA, and tied to a quote from the Supplier. This ordering authority is limited to issuing orders or SOWs for the Requirements Services, Products, or Third-Party Products available under the scope of this Contract. No Authorized User will have the authority to modify this Contract under any circumstances. An order or SOW may contain additional terms and conditions. In the event that the terms and conditions of an order or SOW are inconsistent with the terms and conditions of this Contract, the terms and conditions of this Contract will supersede.
  
3. An Authorized User may, upon mutual agreement, order Maintenance Services, if available, for any Product or Third-Party Product at any time during the Contract Term, irrespective of whether such Product or Third-Party Product is covered under warranty or maintenance at the time the order is issued to Supplier. Dell reserves the right to charge the then applicable recertification fees, if applicable, for maintenance services on Products that are not under warranty or support. Each order will identify:
  - i. Product and, if applicable, serial number, for which Maintenance Services will be provided,
  - ii. Maintenance Level to be provided, and
  - iii. MCP for Product Maintenance. Authorized User may elect, at any time, another Maintenance Level offered by Supplier. Such amendment will take effect within 30 calendar days following Supplier’s receipt of Authorized User’s written notice, in the form of a mutually agreed modification to an order or SOW.

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

Scope and details of Services and Product-specific terms are specified in the applicable standard service description that is attached to or referred in a SOW or quote or is made available through the then-current Supplier website for product- or service-specific terms, currently located at [www.dell.com/offeringspecificterms](http://www.dell.com/offeringspecificterms). Such standard descriptions are from time to time referred to as “Service Description(s)”, “Product Notices” or “Service Briefs.” The version of the applicable document that is effective as of the date of the applicable quote, shall be deemed incorporated into the order or SOW.

#### **F. Statement of Work**

A SOW, in the format provided for in [Exhibit C](#) attached to this Contract, is required for any orders placed by an Authorized User pursuant to this Contract. Supplier shall perform any and all contractual obligations at the times and locations set forth in the applicable SOW and at the rates set forth in [Exhibit B](#) to this Contract. All SOWs will be of a fixed price type unless VITA issues a written authorization for a time and materials type SOW. The fixed price SOWs may, with the written approval of VITA, contain a cost-reimbursable line item(s) for pre-approved travel expenses pursuant to the provisions of the “Reimbursement of Expenses” subsection below. If a time and materials type SOW is authorized, Supplier Personnel shall maintain daily time records of hours and tasks performed that must be submitted or made available for inspection by the Authorized User upon 48 hours advance written notice.

Any change to an SOW must be described in a written change request, in the format provided in [Exhibit D](#). Either Party to an SOW may issue a change request that will be subject to written approval of both Parties before it becomes part of this Contract. In no event will any SOW or any modification require the Supplier to provide any Products, Third Party Products, or Services that

are beyond the scope of this Contract as such scope is defined in Exhibit A, which is attached to this Contract and incorporated by reference.

**G. Invoice Procedures**

Supplier shall ensure that each invoice is remitted to the “bill-to” address provided with the order promptly after the applicable Products, Third Party Products, or Services are accepted. No invoice may include any costs other than those identified in the signed order or SOW, and those costs must be in accordance with the schedule of fees listed on Exhibit B. Without limiting the foregoing, all shipping costs are the Supplier’s responsibility except to the extent shipping charges are identified in Exhibit B and noted in any signed order or SOW referencing this Contract. Supplier shall ensure that all invoices issued identify, at a minimum:

- i. Dates/periods that invoice covers, including any service or subscription periods, as applicable.
- ii. Deliverable(s) or service type
- iii. Quantity, charge and extended pricing for each Product, Third Party Products, and/or Service item
- iv. Applicable date of the order or SOW or both
- v. This Contract number and the applicable order number or SOW number or both
- vi. Supplier’s Federal Employer Identification Number (“**FEIN**”)

Any terms included on Supplier’s invoice will have no force or effect and will in no way bind the Authorized User. Supplier may invoice parts of an order or SOW separately or together in one (1) invoice.

**H. Purchase Payment Terms**

Supplier is responsible for the accuracy of its billing information. Supplier may not issue invoices pursuant to this Contract until all of Supplier’s performance obligations have been accepted and are in accordance with the milestone payment schedule in the applicable order or SOW, or until after services have been rendered. Charges for Deliverables, Components or Services accepted more than 120 calendar days prior to receipt of a valid invoice may not be paid. In the event Supplier repeatedly over-bills an Authorized User, the Authorized User may assess a one percent (1%) charge for the amount over-billed for each month that such over-billing continues.

**I. Reimbursement of Expenses**

An Authorized User will only be liable to pay for Supplier’s travel-related expenses, including transportation, meals, lodging and incidental expenses, that have been agreed by the Parties in advance in the order or SOW. The travel-related expenses will be reimbursable at the then-current per diem amounts and other travel regulations as published by the Virginia Department of Accounts (<http://www.doa.virginia.gov/>). Authorized Users, who are not public bodies, may have their own per diem amounts or other travel regulations applicable to Supplier’s pre-approved travel expenses.

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

**J. Disputed Charges**

If, before payment of an invoice, an Authorized User notifies the Supplier in writing of a disputed charge, Authorized User will have the right to withhold payment of the disputed amount until the dispute is settled or finally resolved. Authorized User must provide this notification within 10 business days of receipt of the invoice. Supplier shall respond in writing to Authorized User’s notification of a disputed charge acknowledging Supplier’s receipt of the dispute within five (5) business days. Any charges disputed by Authorized User will be resolved (whether by credit or explanation of the charge to the Authorized User’s satisfaction in accordance with the Dispute Resolution section) in the Authorized User’s required format within two (2) billing cycles (60 calendar days) following Authorized User’s written notification. In the absence of the Supplier’s written evidence identifying the merit of the disputed amounts, Authorized User will not be

obligated to pay the disputed amounts and may consider the matter concerning the specific identified amounts closed. If a disputed charge is reversed, Supplier shall reverse all associated surcharges, regulatory charges and taxes.

## **16. SUPPLIER SPONSORED PROMOTIONS**

The Supplier, at its discretion, may sponsor Product and Service promotions during the Contract Term or any extensions. In the event that Supplier chooses 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 will communicate to Supplier in writing its agreement to the promotion.

Supplier shall make all sponsored Product or Service promotions 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 will not target any one Authorized User, or a few Authorized Users.

VITA and Authorized Users may, at their discretion, 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.

## **17. REPORTING**

Supplier shall submit, and shall ensure that Certified Partners submit, to VITA monthly reports containing data on:

- i. Amount of Total Sales<sup>1</sup>; and
- ii. Small Business Procurement and Subcontracting Spend

These reports must be submitted in accordance with the instructions and further detailed requirements, and on the templates set forth on the "Supplier & Vendor Reporting Requirements" webpage located at the following URL: <https://www.vita.virginia.gov/procurement/supplier-reporting/>, or any successor URL(s). Supplier and Certified Partner are encouraged to review the site periodically for updates on reporting requirements and methods. Supplier's or Certified Partner's failure to comply with all reporting payment, and other requirements in this section may be deemed by VITA, in its sole discretion, to be a breach of the Contract.

### **A. Amount of Total Sales**

Supplier shall submit, and shall ensure that Certified Partners submit, to VITA a monthly report of Total Sales under this Contract.

In connection to the monthly report of Total Sales, Supplier shall pay, and shall ensure that Certified Partners pay, to VITA the following monthly fees in accordance with instructions described on the "Supplier & Vendor Reporting Requirements" webpage located at: <https://www.vita.virginia.gov/procurement/supplier-reporting/>. The monthly report of Total Sales must include these fees and percentages:

- IFA: 2% of monthly sales

### **B. Small Business Procurement and Subcontracting Spend**

Supplier shall provide to VITA a report of monthly subcontracting spend data. This data must include Supplier's total spend to all Subcontractors who provide direct performance for obligations under this Contract. Supplier's monthly subcontracting spend data must be submitted via the SRS webpage located at: <https://www.vita.virginia.gov/procurement/supplier-reporting/>.

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<sup>1</sup>ALL APEX Branded Solutions (incl. FlexOnDemand and Subscription/Consumption Based Offering/Solutions/Modular Managed Services where applicable) based reporting will be 2 months delayed and on invoiced sales which will be incorporated into the standard reporting cadence.

In addition, every six (6) months following the Effective Date, Supplier shall submit to VITA a "SWaM Subcontracting Certification of Compliance" ("**SSCC**") certifying that Supplier has either through its own Subcontractors or through its Certified Partners fully complied with the Contract's Supplier Procurement and Subcontracting Plan ("**Plan**"). A copy of Supplier's Plan is attached to this Contract as Exhibit H and is incorporated by reference. The SSCC must include a written explanation of any variances of greater than 20% between the Plan and the actual Certified Partner and subcontractor spend by Supplier. Supplier's SSCC will be maintained by VITA in the Supplier's procurement file. Supplier must submit the SSCC to the following address: [SCMInfo@vita.virginia.gov](mailto:SCMInfo@vita.virginia.gov). In the event that Supplier fails to comply with its contractually obligated Plan spend or fails to report its contractually obligated Plan spend, VITA may, at its sole discretion, prohibit or delay any renewals or extensions of the Contract, withhold any final payments due, or both. Supplier's failure to comply will be considered in the prospective award of any future contracts with Supplier.

## **18. SUPPLIER PERFORMANCE MEASURES**

VITA has developed a set of performance measures relating to Supplier's performance under this Contract and which are attached hereto and incorporated by reference in Exhibit I, the order, or SOW. Supplier agrees to be bound by and perform its obligations under this Contract pursuant to these performance measures. The remedies for Supplier's failure to meet the performance measures are set forth in Exhibit I, the order, or SOW.

Supplier and VITA agree to meet within 30 calendar days of the Effective Date of this Contract to set forth the methodology and designated personnel of each Party to provide, collect, monitor, and report the performance measures data and mutually agreed-to incentives and remedies. Supplier agrees to provide to VITA a report of its performance against the performance measures no less than once every six (6) months throughout the Contract Term. Supplier's report must include a comparison of its performance measures against the agreed-to targets and, in the event of any shortfall by Supplier, proposed remediation measures. Supplier will report its performance for the Contract in aggregate and for each order or SOW over \$1,000,000 for applicable Authorized Users. Any instances of Supplier non-compliance will be recorded in Supplier's Contract file and shared with Contract stakeholders. Supplier further agrees that any degradation or failure of Supplier's performance obligations may result in failure to renew the Contract, termination for convenience of the Contract or termination for breach of the Contract. VITA will have all rights and remedies available at law.

## **19. STATUS MEETINGS**

Supplier will be prepared to conduct monthly stewardship meetings with VITA to provide a broad review of all services, projects and ongoing operations. Supplier should also be prepared to conduct semi-annual meetings/presentations to discuss new products and services and their potential benefit to VITA.

## **20. POLICIES AND PROCEDURES GUIDE**

Within 30 calendar days of the Effective Date of the Contract, Supplier will provide VITA will a policy and procedures guide that describes how the Supplier and VITA will work together and how performance, including Deliverables and Services, is to be measured. The guide will provide process, working activities, and interface points with VITA and Supplier deliverables. Updated versions of the guide will be provided by Supplier to VITA and all Authorized Users every six (6) months, or as otherwise mutually agreed, during the Contract Term.

## **21. TRAINING AND DOCUMENTATION**

### **A. Training**

In addition to any online tutorial training Supplier may make available, Supplier may provide training as agreed to between the Authorized User and the Supplier in the SOW or order, the fees for which shall be in accordance with Exhibit B. In order to allow Authorized User, the full benefit of the applicable Deliverable, the training will cover the use and operation of the Deliverable provided to Authorized User including instruction in any necessary conversion, manipulation, or movement of such Authorized User's data. Supplier shall provide personnel sufficiently experienced and qualified to conduct such training at a time and location mutually agreeable to

Supplier and Authorized User. Available additional and optional training, and applicable pricing and discounts, are described in Exhibit B.

**B. Documentation**

Supplier shall make available to Authorized User complete copies of any Documentation applicable to the Product(s) and Third-Party Products provided to Authorized User, in a quantity and media format as agreed upon by the Parties under an order or SOW. This Documentation may include, but is not limited to, overview descriptions of all major functions, detailed step-by-step installation and operating procedures for each screen and activity, and technical reference manuals. Dell's current Documentation can be found here: [www.dell.com/offeringspecificterms](http://www.dell.com/offeringspecificterms)

**22. COMPETITIVE PRICING**

The prices, charges, economic or product terms, or warranties granted under this Contract of Dell-branded Products only (does not include 3rd Party products) shall be fair, reasonable, and commensurate with the price, charge, economic or product term or warranty being offered by Supplier to other government customers that purchase substantially similar services or products, at similar volumes, and under substantially similar terms and conditions. VITA or an Authorized User may notify Supplier and provide evidence of more favorable prices, charges, terms, or warranties of Dell-branded Products that Dell offers to other similarly-situated government customers under same or similar terms and conditions and may request in writing the opportunity for future purchase of those same products/services on the same terms and conditions as Dell has negotiated with such other customers under such reasonably similar circumstances. Supplier shall also offer VITA commercially available national government products and services promotions and rates available at the time of purchase under the terms of those promotions.

**23. CONFIDENTIALITY**

**A. Treatment and Protection**

Each Party shall, for a period commencing upon the date of disclosure until 5 years thereafter ensure that, where it or one of its Affiliates is the receiving Party of Confidential Information hereunder, the receiving Party shall:

- i. hold in strict confidence all Confidential Information of any other Party;
- ii. use the Confidential Information of the disclosing Party solely for the purposes to perform obligations 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 the other Party's Confidential Information to any third-party.

Subject to the terms of this Section 23, the foregoing obligations in relation to technical information about a disclosing Party's products and services or any information about possible unreleased products or services shall survive 5 years after termination or expiration of this Contract.

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

**B. Return or Destruction**

Upon the termination or expiration of this Contract, or upon the earlier written request of the disclosing Authorized User, Supplier shall, upon written request of the disclosing Authorized User, either:

- i. promptly return all tangible Confidential Information (and all copies thereof except the record required by law) to the disclosing Authorized User; or

- ii. destroy any Confidential Information in Supplier's possession or control and provide the disclosing Authorized User with written certification of the destruction.

Additionally, Supplier shall cease all further use of the Authorized User's Confidential Information, whether in tangible or intangible form.

The Authorized User shall retain and dispose of Supplier's Confidential Information in accordance with the Authorized User or the Library of Virginia's record retention policy.

**C. Confidentiality Statement**

All Supplier Personnel performing Services pursuant to this Contract may be required to sign a confidentiality statement or non-disclosure agreement. Any violation of the statement or agreement will be deemed a breach of this Contract and may result in termination of the Contract, or any order or SOW issued hereunder.

**D. Freedom of Information Act Acknowledgement**

All Supplier documents now or later comprising the Contract may be released in their entirety under the Virginia Freedom of Information Act, and Supplier agrees that any confidentiality or similar stamps or legends that are attached to any future documents or information may be ignored to the extent they claim confidentiality beyond that permitted by the Virginia Freedom of Information Act.

In the case of Supplier proprietary or trade secret information, Supplier must have followed the procedures required by Code § 2.2-4342(F) in order for the information to be protected from disclosure under the Virginia Freedom of Information Act.

## **24. INDEMNIFICATION**

**A. Indemnification Generally**

Supplier shall defend and indemnify all Commonwealth Indemnified Parties from and against any third-party Claims to the extent the Claims in any way relate to, arise out of, or result from:

- i. any negligent act, negligent omission, or intentional or willful misconduct of Supplier or any Supplier Personnel for criminal conduct or fraud or damage to tangible property;
- ii. any defect in the Supplier-provided products or Services that results in any alleged bodily injury;
- iii. any Claims by any Subcontractor resulting from Supplier's failure to pay such Subcontractor.

Any claims involving actual or alleged infringement of a third party's intellectual property are governed by the subsection "Indemnification for Intellectual Property Claims" set forth below.

Supplier will be solely responsible for all costs and expenses associated with the defense of all third-party Claims against Commonwealth Indemnified Parties. 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 §§ 2.2-507, 2.2-510, and 2.2-514 of the Code.

If a Claim is commenced against any Commonwealth Indemnified Parties by a third party and Supplier is of the opinion that the allegations in the third-party Claim, in whole or in part, are not covered by the indemnification provision in this Contract, then Supplier shall immediately notify VITA and the affected Authorized User(s) in writing of its opinion that it is not obligated to indemnify VITA or the affected Authorized User. Supplier shall, nonetheless, take all reasonable steps to protect the rights, remedies, and interests of the Commonwealth Indemnified Parties in the defense of the Claim, including to 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.

**B. Indemnification for Intellectual Property Infringement Claims**

Supplier shall defend and indemnify all Commonwealth Indemnified Parties from and against any third-party Claims alleging that use of Supplier-branded products or support/maintenance services ("**Supplier Products**"), in accordance with this Contract, infringes or misappropriates a

third party's intellectual property rights enforceable in the United States as well other country(ies) that are signatories to the Berne Convention ("IP Claim"); and

indemnify Commonwealth Indemnified Parties by paying:(1) the resulting costs and damages finally awarded against Commonwealth Indemnified Parties by a court of competent jurisdiction to the extent that such are the result of the third-party IP Claim; or (2) the amounts stated in a written settlement negotiated and approved by Supplier for any IP Claim.

**C. Defense Intellectual Property Claims and Duty to Replace and Reimburse**

Supplier will be solely responsible for all costs and expenses associated with the defense of all third-party Claims against Commonwealth Indemnified Parties. Selection and approval of counsel, and approval of any settlement, shall be accomplished in accordance with all applicable laws, rules, and regulations. In accordance with §§ 2.2-507, 2.2-510, and 2.2-514, the selection and approval of counsel, and approval of any settlement, shall require Commonwealth approval, such approval not to be unreasonably withheld provided Supplier shall have the right and ability to make any final decisions regarding the resolution of the IP Claim. In the event of a settlement between Supplier and a private institution of higher education listed at <http://www.cicv.org/Our-Colleges/Profiles.aspx> who is an Authorized User of this Contract only to the extent provided by the applicable laws, such settlement shall be reasonably satisfactory to that institution provided Supplier shall have the right and ability to make any final decisions regarding the resolution of the IP Claim.

In the event that an IP Claim is commenced against any of Commonwealth's Indemnified Parties alleging that the provision of support/maintenance services for under this Contract infringes any third party's Patent, copyright trade secret enforceable in the US 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 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. Commonwealth Indemnified Parties may, at their own expense, participate in the defense of any IP Claim and represents their own interests and Supplier shall in such event make commercially reasonable efforts to provide reasonable cooperation to any Commonwealth Indemnified Parties to permit the Commonwealth Indemnified Parties to defend their interests.

In the event of a IP Claim pursuant to any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Services, and in addition to all other obligations of Supplier in this Section, Supplier may at its expense, either (a) procure for VITA the right to continue use of such infringing Products or Services, or any component thereof; or (b) replace or modify such infringing Products or Services, or any component thereof, with non-infringing services reasonably satisfactory to VITA. And in addition, Supplier shall provide VITA with comparable temporary replacement Products or Services or reimburse VITA for the reasonable costs incurred by VITA in obtaining alternative Products or Services in the event VITA cannot benefit from the affected Products or Services. 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 rendered unusable by VITA as a result of the infringing component, and refund the price paid to Supplier for such components. Notwithstanding the foregoing, Supplier shall have no obligation for any IP Claim resulting or arising from (i) any combination, operation, or use of a Supplier Product with any other products, services, items or technology introduced by VITA or Authorized Users, including third party products and open source software, where the IP Claim would not have arisen but for such combination, operation, or use; (ii) use for a purpose or in a manner for which the Supplier Product was not designed, or use after Supplier notifies VITA or Authorized User to cease such use due to a possible or pending IP Claim; (iii) any modifications made by any person other than Supplier, Certified Partners, or other personnel authorized by Supplier; or (iv) Supplier's compliance with VITA or Authorized User's written specifications or directions, including the incorporation of any software or other materials or processes provided by or requested by VITA or Authorized User.

Supplier's duty to indemnify and defend under this Section is contingent upon: (i) Supplier receiving prompt written notice of the third-party claim or action for which Supplier is obligated to indemnify VITA or Authorized User under this section; (ii) to the extent permitted under state law as listed above, Supplier having the right to control the defense and resolution of such claim or action, provided that resolution does not require monetary payment by VITA or Authorized User without its consent; and (iii) VITA or Authorized User's cooperation with Supplier in defending and resolving such claim or action.

This Section states VITA and/or Authorized User's exclusive remedies for any IP Claim or action, and nothing in this Contract or elsewhere will obligate Supplier to provide any greater indemnity to VITA or Authorized User.

Supplier agrees to extend to VITA any warranty or indemnity provided by Dell's suppliers, applicable to Third Party Products provided by Supplier to VITA under this Agreement, that may by its own terms be extended to VITA without additional payment or liability by Supplier

## **25. LIABILITY**

### **A. Supplier Liability**

Except for liability arising from:

- i. any intentional or willful misconduct, fraud, or recklessness of Supplier or any Supplier Personnel; or
- ii. claims for bodily injury, including death, and damage to real property or tangible property resulting from the negligence of a Supplier or any Supplier Personnel,

Supplier's liability and indemnification obligations in the aggregate will not exceed the greater of twice the total Charges for the Product(s) or Services provided to the Authorized User under this Contract for the preceding twenty-four (24) months prior to the incident which gave cause for the liability or \$10,000,000.00.

Supplier agrees that it is fully responsible for all acts and omissions of its employees, agents, Certified Partners, and subcontractors, including their negligence or willful misconduct.

EXCEPT FOR CLAIMS ARISING FROM SUBSECTIONS i. and ii. ABOVE, 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

## **26. INSURANCE**

In addition to the insurance coverage required by law as referenced in the "Incorporated Contractual Provisions" section of this Contract below, Supplier shall carry:

Errors and omissions insurance coverage in the amount of \$5,000,000 per occurrence; and

Throughout the Contract Term, Supplier shall provide evidence of insurance and access to a copy of Supplier's policy documents upon request by VITA.

## **27. SECURITY COMPLIANCE**

Supplier shall take, and require that its Certified Partners take, all commercially reasonable steps to comply with all applicable provisions of the then-current Commonwealth security procedures, published by VITA and which may be found at: <https://www.vita.virginia.gov/policy--governance/policies-standards--guidelines/>,—or any successor URL(s)— as are pertinent to Supplier's performance of Services under this Contract to the extent such Policies and Standards align and are not in conflict with Dell policies and standards agrees to the following. Further, Supplier shall comply with all applicable provisions of the relevant Authorized User's then-current security procedures as are pertinent to Supplier's performance of services under this contract and which have been provided to Supplier by the Authorized User. Supplier shall also comply with all applicable federal, state, and local laws and regulations.

Any unauthorized release of any Confidential Information, or Commonwealth proprietary or personal information, by the Supplier, its Certified Partners, or Supplier Personnel constitutes a breach of

Supplier's obligations under the Contract. Supplier shall notify VITA and any affected Authorized User within 48 hours of discovery of, an actual breach of "unencrypted" and "unredacted" personal information, as those terms are defined in Code § 18.2-186.6. Authorized Users acknowledge that additional security procedures may result in additional costs.

Supplier does not require access to and will not create, maintain or store Personal Information during the performance of Services under the scope of this contract. Any access to Personal Information during the performance of Services will be incidental to the Services provided. VITA and Authorized Users are solely responsible for encrypting or redacting Personal Information which Supplier may have access to during the course of performance of Services hereunder.

## **28. IMPORT/EXPORT**

VITA or Authorized User's purchase of Products and Third-Party Products and access to related technology (collectively, the "Materials") are intended for its own use, not for resale, export, re-export, or transfer. Both Parties are subject to and responsible for compliance with the export control and economic sanctions laws of the United States and other applicable jurisdictions. In addition, VITA policy requires that any data deemed "restricted" or "sensitive" by either federal or state authorities, may only be collected, developed, analyzed, or otherwise used or obtained by persons or entities working within the continental United States"

## **29. ACCEPTABLE USE POLICY – IF APPLICABLE**

VITA and Authorized User agree to abide by Supplier's Acceptable Use Policy ("**AUP**"), as amended by the parties hereby and incorporated as Exhibit J. Because certain standard clauses that may appear in, or be incorporated by reference into, Supplier's standard AUP cannot be accepted by VITA, and in consideration of the convenience of using that form, and this form, without the necessity of specifically negotiating a separate contract document, the parties hereto specifically agree that:

- i. In the event of a conflict between this Contract and the AUP, the Contract shall control;
- ii. In the event of a material, unilateral revision to the AUP by Supplier that substantially impairs the ability of VITA or any other public body from its lawful use of the Service, VITA shall have the option to (a) request that the revision be rescinded; or (b) request that the revision be waived as to VITA or other public bodies receiving Services under this Agreement;

If Supplier fails to grant a request by VITA per (a) or (b) above within 30 days of receiving the request, then VITA may, at its option, terminate this Contract, in whole or in part, or any order or SOW, in whole or in part, without termination liability.

## **30. THIRD PARTY TERMS AND CONDITIONS**

Supplier may offer to supply Third Party Products that are provided by a third party manufacturer/supplier, including without limitation under Supplier's "Extended Technologies Complete" program, Supplier's "Brokerage" program or Supplier's Software & Peripherals (S&P) program, or such other programs as Supplier may operate from time to time, and may include offerings from Supplier Affiliates using different brands other than "Dell" or "Dell EMC". Notwithstanding any other provisions herein, such Third-Party Products are subject to the standard license, services, warranty, indemnity and support terms of the third-party manufacturer/supplier (or an applicable direct agreement between Authorized Users and such manufacturer/supplier), to which Authorized User(s) shall adhere to the extent they do not conflict with Virginia law. Even if support fees are invoiced through Supplier, such Third-Party Products are not supported by Supplier and Authorized User(s) shall contact such third party directly for support. Any warranty, damages or indemnity claims against Supplier in relation to such Third-Party Products are expressly excluded.

### 31. BANKRUPTCY

If Supplier becomes insolvent, takes any step leading to its cessation as a going concern, fails to pay its debts as they become due, or ceases business operations continuously for longer than 15 business days, then VITA may immediately terminate this Contract, and an Authorized User may terminate an order or SOW, 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 or SOW. If this Contract has not been otherwise terminated and bankruptcy proceedings are commenced with respect to Supplier, then VITA may suspend all further performance of this Contract until Supplier assumes this Contract and provides adequate assurance of its performance of Supplier's contractual obligations 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 suspension of further performance by VITA or Authorized User pending Supplier's assumption or rejection will not be a breach of this Contract and will not affect the rights of VITA or any Authorized User to pursue or enforce any of its rights under this Contract or otherwise.

### 32. GENERAL PROVISIONS

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

Supplier has no authority to contract for, bind or commit 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 will Supplier, or any Supplier Personnel, 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 will have any duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or any Supplier Personnel. Supplier affirms 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 for Supplier any federal, state, or local employment taxes, including, but not limited to, income tax withholding and social security contributions. Supplier shall pay or withhold any and all taxes, interest or penalties (including, but not limited to, any federal, state, or local withholding or employment taxes, and any penalties related to health care or employee benefits laws) that are imposed, assessed, or levied as a result of this Contract or Services performed pursuant to this Contract. Supplier shall reimburse VITA or any Authorized User in the event that any taxes, interest or penalties are assessed against and paid by VITA or any Authorized User as a result of this Contract. Supplier and Certified Partners may request that Authorized Users provide complete and accurate documentation and forms.

#### B. Licensing Within the Commonwealth

As applicable, licenses granted or provided pursuant to this Contract, whether to Work Product, System Software, COTS Software, or any other Software will be held by:

- i. the Commonwealth, if the Authorized User is an agency as defined by Code § 2.2-2006 or a legislative, judicial and independent agency of the Commonwealth, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code;
- ii. the applicable public body, if the Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity; or
- iii. the applicable private institution of higher education, if the Authorized User is a private institution of higher education listed at: <http://www.cicv.org/Our-Colleges/Profiles.aspx>.

#### C. Incorporated Contractual Provisions

In addition to the terms, conditions, and obligations of this Contract, Supplier agrees to the VITA "Mandatory Contract Terms" which consist of the VITA:

- "Core Contractual Terms"; and
- "Mandatory Internal Revenue Service (IRS) Publication 1075 (required for FTI data only)"

These Mandatory Contract Terms are set forth at the following URL and incorporated into this Contract by reference: <https://www.vita.virginia.gov/procurement/contracts/mandatory-contract-terms/>.

Supplier agrees that non-compliance with the above-referenced Mandatory Contract Terms including Exhibit 7, "Safeguarding Contract Language" of IRS Publication 1075 which is attached to this Contract as Exhibit K and is incorporated by reference—may be deemed as a material breach of the applicable Order or SOW or of the Contract. Supplier is responsible for verifying the correct and current version of this IRS publication and related safeguarding terms language and acknowledges that any Authorized User issuing the Order or SOW will be held harmless.

The then current terms and conditions set forth in documents posted at the URL above, and any successor URL(s), are subject to change pursuant to action by the legislature of the Commonwealth, change in VITA policy, or change to IRS Publication 1075, if applicable. If a change is made to any of the Mandatory Contract Terms documents, a new effective date will be noted in the applicable document title. VITA shall take reasonable efforts to notify Supplier of any applicable changes, but Supplier is advised to check the URLs, or their successors, periodically.

**D. Compliance with the Federal Lobbying Act**

Supplier's signed certification of compliance with 31 U.S.C. § 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 is incorporated as Exhibit G to this Contract.

**E. Ethics in Public Contracting**

By signing this Contract, Supplier represents that its assent to this Contract is made without collusion or fraud, and that Supplier has not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with their proposal or the terms of this Contract. Further, Supplier represents that it has not conferred any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, on any public employee having official responsibility for this procurement transaction, unless consideration of substantially equal or greater value was exchanged. In addition, Supplier represents and agrees that it will notify VITA if it becomes aware of a potential conflict of interest in the future.

**F. Governing Law**

This Contract is governed by and will be 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 relating to this Contract must 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. The Uniform Computer Information Transactions Act applies to this Contract only to the extent required by Code § 59.1-501.15.

**G. Dispute Resolution**

In accordance with Code § 2.2-4363, contractual claims, whether for money or other relief, must be submitted in writing to the public body from whom the relief is sought no later than 60 calendar 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 will not delay payment of amounts agreed due in the final payment. The relevant public body shall render a final decision in writing within 30 calendar days after its receipt of the Supplier's written claim. The existence or results of any negotiation or mediation will be treated as confidential to the fullest extent allowed by law.

The Supplier may not invoke any available administrative procedure under the Code 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 30 calendar days. The decision of the relevant public body will 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 Code § 2.2-4364 or the administrative procedure authorized by Code § 2.2-4365.

In the event of any breach by a Commonwealth agency, Supplier's remedies will be limited to claims for damages and interest allowable under the Code and, if available and warranted, equitable relief. All such claims to be processed pursuant to this Section. In no event will Supplier's remedies include the right to terminate any license or support services hereunder.

**H. Assignment**

This Contract is binding upon and will 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 under this Contract, to any entity without the prior written consent of VITA which consent shall not be unreasonably withheld, and any attempted assignment or subcontracting without consent will be void. VITA may assign this Contract to any entity, so long as the assignee agrees in writing to be bound by the all the terms and conditions of this Contract

If any law limits the right of VITA or Supplier to prohibit assignment or nonconsensual assignments, the effective date of the assignment will be 30 calendar 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 will not be covered by this assignment.

**I. Severability**

Invalidity of any term of this Contract, in whole or in part, will 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.

**J. Survival**

Any provisions of this Contract regarding System Software License, Product Warranty and Remedy, Confidentiality, Security Compliance, Liability, Indemnification, Transition of Services, the right to purchase Maintenance Services, and the General Provisions will survive the expiration or termination of this Contract.

**K. Force Majeure**

No Party will be responsible for the delay or failure to meet its obligations under this Contract if the delay or failure arises from causes beyond the reasonable control and without the fault or negligence of the obligated Party. If any performance date under this Contract is postponed or extended pursuant to this Section for longer than 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 or fault to Supplier for that termination, and in addition an Authorized User may terminate any order or SOW affected by such postponement or delay.

**L. No Waiver**

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

**M. Remedies**

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

**N. Right to Audit**

VITA reserves the right to audit those Supplier records that specifically relate to the financial obligations of the parties and to invoices for Contract, orders, invoices, or any SOWs issued there under. VITA's right to audit is limited as follows:

- i. Authorized Users shall have the right to audit for a period of up to five (5) years from the date of the invoice related to the record(s) requested. .
- ii. at VITA's expense.
- iii. no more than once every twelve (12) months.
- iv. performed at Supplier's premises, during normal business hours at mutually agreed upon times; and
- v. access to Supplier cost information is excluded.

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

**O. Taxes**

The Commonwealth is exempt from Federal excise and all State and Local taxes, and any such taxes may not be included in Contract prices. Tax certificates of exemption, Form ST-12 can be obtained from Authorized Users upon request. Deliveries against this Contract shall be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

**P. Currency**

All prices, costs, or fees in this Contract and all exhibits, schedules, orders, or SOWs will be in United States dollars.

**Q. Advertising and Use of Proprietary Marks**

No Party may use the name of the other Party or refer to the other Party, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of the other Party. In no event may any Party use a proprietary mark of the other Party without receiving the prior written consent of the other Party.

**R. Notices**

Any notice required or permitted to be given under this Contract must be in writing and will 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:

i. To VITA and to Supplier, if Supplier is incorporated or formed pursuant to the laws of the Commonwealth, to the addresses shown on the signature page.

ii. To Supplier, if Supplier is incorporated or formed outside the Commonwealth, to the address shown on the signature page and to the Registered Agent registered with the Virginia State Corporation Commission.

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

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

**S. Contract Administration**

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

**T. Captions**

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

**U. 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 – Requirements

Exhibit B – Pricing

Exhibit C – Statement of Work (SOW) Template

Exhibit D – Change Order Template

Exhibit E – Certified Partners

Exhibit F – End User Licensing Agreement (for reference only)

Exhibit G – Certification Regarding Lobbying

Exhibit H – Small Business (SWaM) Subcontracting Plan

Exhibit I – Service Level Agreements

Exhibit J – Supplier Acceptable Use Policy

Exhibit K – Internal Revenue Service Publication 1075 - Exhibit 7 Safeguarding Contract Language

This Contract, its exhibits, and any prior non-disclosure agreement constitute the entire agreement between VITA and Supplier and supersede any and all previous representations, understandings, discussions or agreements between VITA and Supplier as to the subject matter of this Contract. Any and all terms and conditions contained in, incorporated into, or referenced by the Supplier's proposal are deemed invalid. The provisions of the Virginia Department of General Services, Division of Purchases and Supply Vendor's Manual will not apply to this Contract or any order issued pursuant to the Contract. This Contract may only be amended by an instrument in writing signed by VITA and Supplier.

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

**V. Order of Precedence**

In the event of a conflict, the following order of precedence shall apply: this Contract document, Exhibit A, Exhibit B, Exhibit I, all other Exhibits listed above, and any individual SOW/Order. In the event of a conflict or inconsistency between the negotiated terms of this Contract and any provision incorporated by reference into the Contract (e.g., a section of a License Agreement), the negotiated terms of this Contract will take precedence. For purposes of this section, a "conflict" exists with respect to a subject that has been comprehensively addressed in the Contract when supplementary terms contained in a provision incorporated by reference would alter the rights and obligations of the Parties set forth in the Contract.

**W. Counterparts and Electronic Signatures**

This Contract may be executed in multiple counterparts, each of which, when assembled to include an original signature for each of Supplier and VITA, will constitute a complete and fully executed original. All fully executed original counterparts will collectively constitute a single agreement. Signatures transmitted by fax or electronic mail (in portable data format ("**PDF**")) are also permitted as binding signatures to this Contract.

**X. Opportunity to Review**

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.

SIGNATURE PAGE(S) TO FOLLOW

Signed by the undersigned authorized representatives of VITA and Supplier and effective as of the Effective Date set forth in the preamble of this Contract above.

**Supplier,  
Dell Marketing L.P.**

**VITA, on behalf of the  
COMMONWEALTH OF VIRGINIA**

*Katherine Castillo*

*Robert Osmond*

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Name: Katherine Castillo \_\_\_\_\_  
(Print)

Name: Robert Osmond \_\_\_\_\_  
(Print)

Title: Paralegal Advisor \_\_\_\_\_

Title: Chief Information Officer (CIO) for the  
Commonwealth of Virginia

Date: 10/24/2025 1:18:38 PM \_\_\_\_\_

Date: 10/27/2025 4:31:00 PM \_\_\_\_\_

Address for Notice:  
\_\_\_\_\_  
\_\_\_\_\_

Address for Notice:  
7325 Beaufont Springs Dr \_\_\_\_\_  
Richmond VA 23225 \_\_\_\_\_

Attention: Supplier Contact

Attention: Contract Administrator