Warranty and Remedy	**Performance** Supplier shall perform its warranty and maintenance obligations hereunder in accordance with the highest professional duty of care. **Ownership** Supplier is the owner of the Product or otherwise has the right to grant to the Commonwealth title to or the right to use the Product provided hereunder without violating or infringing any law, rule, regulation, United States or foreign copyright, patent, trade secret or other proprietary right of any third-party. The Commonwealth shall obtain good and clear title to the Product, free and clear of all liens, claims, security interests and encumbrances upon payment. **Supplier Viability** Supplier warrants that it has the financial capacity to perform and continue to perform its obligations under this Contract that no legal proceedings have been threatened or brought against Supplier that could threaten performance of this Contract and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction. **Compatibility** Supplier warrants that each Product provided hereunder is, and will continue to be, data, program, and upward compatible with any other product available or to be available from Supplier within the same family of products so that data files created for each Product can be utilized without adaptation of the other products, and so that programs written for the Product will operate on the other systems, and not result in the need for alteration, emulation, or other loss of efficiency. In addition, the Product is, and will continue to be; compatible with other products provided by Supplier within the same family of products and the Product will be fully integrated, compatible, and operable with all other hardware contained within such other products. **Product** Supplier warrants the following with respect to the Product: a). If Product is pursuant to a particular Request for Proposal, such Product shall be fit for the particular purposes specified by the Commonwealth and Supplier is possessed of superior knowledge with respect to the Product and is aware that the Commonwealth is relying on Supplier's skill and judgment in providing the Product; b). The Product shall be free of defects in material, design and workmanship; c). Upon delivery, the Product shall be new and in good operating condition and shall have all engineering changes released to date already installed; d). Each Product delivered hereunder shall function in conformance with the Specifications for the applicable warranty; e). Any engineering changes made to the Product or software revisions will not degrade the performance of the Product to a level below that defined in the applicable Request for Proposal, and Supplier's published specifications; f). Upon delivery, all software will be at the current release level unless otherwise requested by the Commonwealth; and g). The software shall not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent the Commonwealth's use of the software, nor will Supplier disable the Commonwealth's use of such software through remote access or otherwise. If the software contains authorization codes allowing access to a data base or other software, Supplier warrants that such codes shall be perpetual and non-expiring.

	Remedy a. Supplier will provide the following warranty services (including unlimited telephonic support and all necessary travel and labor) without additional charge to maintain the Product in accordance with the Specifications: h). During the Warranty Period, Supplier will promptly notify the Commonwealth of any defects or malfunctions in the Product or documentation of which it learns from any source, correct any such defects or malfunctions or provide a workaround until corrected within 10 business days of knowledge of such defect or malfunction and provide the Commonwealth with corrections of same, at no additional cost to the Commonwealth. In the event that the Commonwealth identifies, within such Warranty Period, any design defect or non-conformance to specifications in the Product, Supplier, at Supplier's sole expense, shall provide all parts, components and services required to correct the design defect and restore such item or shall replace it, so that it functions as warranted. If Supplier is unable to make the failed Product conform within _____ (_____) days following notification by the Commonwealth, Supplier shall, at the Commonwealth's request, accept return of such Product, and return all monies paid for the failed units. Service provided by Supplier to correct the design defect shall be on-site or remote Supplier shall be solely responsible for the return of defective Product to Supplier. i). Respond to problems with the Product identified by the Commonwealth in no more than two (2) hours after notification. Resolve all problems according to the following: b. Priority 1 (System Down) within one(1) hours c. Priority 2 Certain Processing interrupted or malfunctioning but system able to process) within twenty four (24) hours d. Priority 3 (minor intermittent malfunctioning, system able to process data) within three (3) days. e. Time frames to correct, based on the level of severity (e.g., critical, significant, other), will be defined by the Commonwealth. j). During the Warranty Period, provide to the Commonwealth no later than the first day of general release, copies of the System Software (herein after defined) and documentation revised to reflect any enhancements (including new releases and upgrades) to the System Software. k). Dead on Arrival (DOA). If Product is non-operational at the time of installation or fails within the initial thirty (30) days of operation, Supplier shall replace such item within _____ (_____) days of notification of such fact by the Commonwealth. Any replacement Product shall become the sole property of the Commonwealth and any defective Product shall become the sole property of Supplier. Supplier shall be solely responsible for the return of defective Product to Supplier. l). Mean-Time-Between-Failure Standards (MTBF). For a period of five (5) years following acceptance of the Product by the Commonwealth, Supplier warrants that the Product's performance standards and MTBF standards, calculated based upon the Commonwealth's installed base of Supplier Product, shall be at least as good as the standards set forth in Exhibit B. If the Product fails to satisfy (i) the MTBF standards or (ii) the performance standards for that Product type as set forth herein, Supplier shall pay for any and all additional repairs, parts and labor required to bring Product to the appropriate level set forth in Exhibit B, including the cost to retrofit the entire installed Product base. If Supplier fails to so modify or replace the Product so as to achieve the MTBF standards within _____ (_____) days, the Commonwealth may, at its option, return such Product and receive a full refund during the Product warranty period, or if the warranty has expired, receive a pro-rated refund, by year thereafter for the five (5) year period following installation of the Product.
SOFTWARE LICENSE	License Grant Supplier hereby grants to the Commonwealth a fully paid, perpetual, worldwide, nonexclusive, transferable, irrevocable

license to use System Software for each Product. Each license granted under this Contract authorizes the Commonwealth to use Supplier licensed programs in machine readable form on any system without limitation. In the event Supplier is remarketing a commercially available software program, Supplier will pass through the provision of the original vendor's license which will apply in lieu of the foregoing terms and conditions.

Limitations on Use

Location

Each license granted under this Section authorizes the Commonwealth to use the licensed programs in machine readable form on any system without limitation.

Authorized Uses

The Commonwealth may use the System Software for any legal internal use and may also use the System Software to provide commercial data processing services for others, including: time sharing, remote data processing services, service bureau operations, remote database services, facilities management, and developing software for sale or license to third-parties.

Limitations on Copying and Disclosure

No Transfer of Title

The System Software is the property of Supplier, and no title or ownership of the System Software or any of its parts, including documentation, is transferred to the Commonwealth.

Copies

The Commonwealth may make a reasonable number of backup copies of the System Software. The Commonwealth agrees that any copies of the software or documentation which it makes pursuant to this Contract shall bear all copyright, trademark and other proprietary notices included therein by Supplier and, except as expressly authorized herein, the Commonwealth shall not distribute same to any third-party without Supplier's prior written consent.

Authorized Acquisitions

If the Commonwealth acquires another entity that has separately licensed System Software, then the Commonwealth, shall automatically, at no extra charge, be licensed to use such entity's copies of the System Software to the extent allowed under the acquisition agreement. Upon written notice to Supplier, the Commonwealth may elect to have such usage governed under the terms and conditions of this Contract, instead of under the other entity's license with Supplier. Business Continuity and Recovery

In the event that all of the Commonwealth's copies of the System Software, including all backup copies, are destroyed, irreparably damaged or otherwise lost due to fire, explosion, sabotage, flood or other natural disaster not occasioned by the fault of the Commonwealth, Supplier will provide to the Commonwealth, at no additional cost, a replacement copy of the System Software and documentation; provided however, that nothing contained in this Section shall obligate Supplier to replace or assist in the recovery of data lost concurrent with the loss of the System Software.

COMPETITIVE PRICING	Supplier warrants and agrees that each of the charges, economic or product terms or warranties granted to the Commonwealth pursuant to this Contract are comparable to or better than the equivalent charge, economic or product term or warranty being offered to any other commercial or government customer of Supplier. If Supplier enters into any arrangements with another customer of Supplier or with an Authorized User providing for any materially more favorable charges, economic or product terms or warranties, then this Contract will be deemed amended to incorporate the most favorable charges, economic or product terms or warranties, and Supplier will immediately notify the Commonwealth of such change.
CONFIDENTIALITY	Treatment and Protection Each Party agrees to (i) hold in strict confidence all Confidential Information of the other Party, (ii) use the Confidential Information solely to perform or to exercise its rights under this Contract, and (iii) not to transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any third party. Notwithstanding the foregoing, the Commonwealth may disclose System Software as delivered by Supplier to subcontractors, contractors or agents of the Commonwealth that are bound by a non-disclosure agreement with the Commonwealth. The receiving Party agrees to comply with any confidentiality agreements between the disclosing Party and any third party related to confidential or proprietary information of such third party. Each Party shall take the same measures to protect against the disclosure or use of the Confidential Information as it takes to protect its own proprietary or confidential information (but in no event shall such measures be less than reasonable care). Exclusions The term "Confidential Information" shall not include information that is: • 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; • obtained independently from a third party without an obligation of confidentiality to the disclosing Party and without breach of this Contract; or • independently developed by the receiving Party without reference to the Confidential Information of the other Party. Disclosures Required by Law The receiving Party may disclose the Confidential Information of the other in response to a valid court order, law, rule, regulation (including any securities exchange regulation), or other governmental action provided that (i) the disclosing Party is notified in writing prior to disclosure of the information, and (ii) the receiving Party assists the disclosing Party, at the disclosing Party's expense, in any attempt by the other to limit or prevent the disclosure of the Confidential Information.
SECURITY COMPLIANCE	Supplier agrees to comply with all provisions of the Commonwealth's approved security procedures as are pertinent to Supplier's operation and supplied to Supplier by the Commonwealth and further agrees to comply with all applicable federal, state and local laws. Supplier shall indemnify, defend, and hold the Commonwealth, its officers, directors, employees and agents harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable expenses suffered by, accrued against, or charged to or recoverable from the Commonwealth, its officers, directors, agents or employees, on account of the failure of Supplier to perform obligations imposed herein.
LIABILITY AND INDEMNIFICATION	Supplier agrees to indemnify, defend and hold the Commonwealth, its officers, directors, agents and employees ("Commonwealth's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of the Commonwealth's Indemnified Parties to the extent such Claims in any way relate to, arise out

	of or result from: (i) any intentional or willful conduct or negligence of any employee or subcontractor of Supplier, (ii) breach of any representation, warranty or covenant of Supplier contained herein, (iii) any defect in the Product or the Services, or (iv) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Products or Services. In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Products or Services, and in addition to all other obligations of Supplier in this Section, Supplier will at its expense, either (a) procure for the Commonwealth 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 products or services satisfactory to the Commonwealth, provided that Supplier will provide the Commonwealth with a comparable temporary replacement product or reimburse the Commonwealth for the reasonable costs incurred by the Commonwealth in obtaining an alternative product in the event the Commonwealth cannot use the affected Product. If Supplier cannot accomplish any of the foregoing within a reasonable time and at commercially reasonable rates, then Supplier shall accept the return of the infringing component of the products or services, along with any other components of any products rendered unusable by the Commonwealth as a result of the infringing component, and refund the price paid to Supplier for such components. Supplier shall defend any such Claim with counsel reasonably satisfactory to the Commonwealth and shall pay any interim or final judgment or award entered against the Commonwealth, or settlement amount agreed to by Supplier, within sixty (60) days of such judgment award being entered and shall, in addition, pay any and all other reasonable expenses incurred by the Commonwealth in connection with any such claim. Supplier may settle any Claim without the Commonwealth's written consent unless such settlement (x) contains an admission of liability or wrongdoing by the Commonwealth; (y) does not include a release of all covered claims pending against the Commonwealth; or (z) imposes any obligations upon the Commonwealth other than an obligation to stop using any infringing items. **EXCEPT WITH REGARD TO CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURY OR INFRINGEMENT, AND THE INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, WITH RESPECT TO EACH OF WHICH LIABILITY SHALL NOT BE LIMITED PURSUANT TO THIS SECTION, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY (OR THE INDEMNIFIED PARTIES OF SUCH PARTY) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFIT, INCOME OR SAVINGS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, EXCEPT WHEN SUCH DAMAGES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS.**

BANKRUPTCY	If Supplier becomes insolvent, takes any step leading to its cessation as a going concern, or ceases business operations for any reason and other than assignment as allowed by this Contract, then the Commonwealth may immediately terminate this Contract on notice to Supplier unless Supplier immediately gives the Commonwealth adequate assurance of the future performance of this Contract. If bankruptcy proceedings are commenced with respect to Supplier, and if this Contract has not otherwise terminated, then the Commonwealth may suspend all further performance of this Contract until Supplier assumes or rejects this Contract pursuant to Section 365 of the Bankruptcy Code or any similar or successor provision. Any such suspension of further performance by the Commonwealth pending Supplier's assumption or rejection will not be a breach of this Contract, and will not affect the Commonwealth's right to pursue or enforce any of its rights under this Contract or otherwise.
Relationship Between the Commonwealth and Supplier	Supplier has no authority to contract for the Commonwealth or in any way to bind or to commit the Commonwealth to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of the Commonwealth. Under no circumstances will Supplier, or any of its employees, hold itself out as or be considered an agent or an employee of the Commonwealth, and the Commonwealth will have no duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or its employees. Supplier represents and warrants that it is an independent contractor for purposes of federal, state and local employment taxes and agrees that the Commonwealth is not responsible to collect or withhold any federal, state or local employment taxes, including, but not limited to, income tax withholding and social security contributions, for Supplier. Any and all taxes, interest or penalties, including, but not limited to, any federal, state or local withholding or employment taxes, imposed, assessed or levied as a result of this Contract will be paid or withheld by Supplier or, if assessed against and paid by the Commonwealth, will be reimbursed by Supplier upon demand by the Commonwealth.
Governing Law	The Parties agree to abide by all applicable law enacted by the Commonwealth, which are posted on the VITA website and available at [**insert URL**]. This Contract shall be governed by and construed in accordance with the laws of the Commonwealth without regard to that body of law controlling conflicts of law. 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.
Dispute Resolution	In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the VITA no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to VITA at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. VITA shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim. The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia. Contractor agrees to submit any and all contractual disputes arising from this contract to VITA's alternative dispute resolution procedures. Contractor may invoke VITA's alternative dispute resolution procedures at any time and concurrently with any other statutory remedies prescribed by the Code of Virginia. In the event of any breach by the Commonwealth, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor's remedies include the right to terminate any license or support services hereunder
Advertising	Supplier will not use the Commonwealth's name or refer to the Commonwealth or any of its Authorized Users, directly or indirectly, in any manner without receiving prior written consent of the Commonwealth.

Notices	Any notice required or permitted to be given under this Contract will 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 to the addresses shown on the signature page. Either Party may change its address for notice purposes by giving the other Party notice of such change in accordance with this Section.
No Waiver	Any failure to enforce any terms of this Contract will not constitute a waiver.
Assignment	To the fullest extent permitted by law, the parties agree that Supplier's rights and obligations under this Contract shall not be assignable, in whole or in part, to any other party without the Commonwealth's prior written consent, and that any purported assignment or transfer without such consent shall be null and void. If any law limits the right of the Parties to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be as follows. The Supplier shall give the Commonwealth prompt written notice of the assignment, signed by authorized representatives of both the Supplier and the assignee. This written notice shall be on the Commonwealth's "Assignment Notice / Payment Instruction" form and shall provide all information requested on that form. Copies of the form may be obtained from VITA (to the attention of Supply Chain Management) at the address of notice. Upon the Commonwealth's acknowledgment of receipt of the properly executed form, the assignee shall notify the Controller, VITA of the assignment and shall supply the Controller, VITA with a copy of the properly executed form. Any payments made prior to receipt of such notification and form shall not be covered by this assignment. In the event the Commonwealth receives any notice from a third party claiming to be an assignee of any rights of the Supplier under this Contract, Supplier agrees that payment or other performance in respect of those rights shall not be due until at least thirty (30) days after the Commonwealth's receipt of the notice required by the above paragraph or receipt of a similarly executed notice confirming the absence or revocation of the purported assignment. SCM of the Commonwealth shall promptly notify the Supplier of any assignment notice it receives.
Severability	Invalidity of any term of this Contract, in whole or in part, will not affect the validity of any other term. The Parties further agree that in the event such provision is an essential part of this Contract, they will immediately begin negotiations for a suitable replacement provision.
Survival	The provisions of this Contract regarding Software License, Warranty, Confidentiality, Liability and Indemnification, and the General Provisions will survive the expiration or termination of this Contract.
Force Majeure	Neither Party will be responsible for failure to meet its obligations under this Contract if the failure arises from causes beyond the control and without the fault or negligence of the non-performing Party. If any performance date under this Contract is postponed or extended pursuant to this section for longer than thirty (30) calendar days, the Commonwealth, by written notice given during the postponement or extension, may terminate Supplier's right to render further performance after the effective date of termination without liability for that termination.
Remedies	The remedies set forth in this Contract are intended to be cumulative. In addition to any specific remedy, the Commonwealth reserves any and all other remedies that may be available at law or in equity.
Right to Audit	The Commonwealth reserves the right to audit those Supplier records that relate to the Product purchased and Services rendered or the amounts due Supplier for such services under this Contract. The Commonwealth's right to audit will be limited as follows: Five (5) years from Service performance date; • Performed at Supplier's premises, during normal business hours at mutually agreed upon times; and • Excludes access to Supplier cost information

Offers of Employment	During the first twelve (12) months of the Contract, should Supplier hire an employee of the Commonwealth who has substantially worked on any Project covered by this Contract without prior written consent, the Supplier will be billed for 50% of the employee's annual salary in effect at the time of termination.
Contract Administration	Supplier agrees that at all times during the term of this Contract an account executive, at Supplier's senior management level, will be assigned and available to the Commonwealth. Supplier reserves the right to change such account executive upon reasonable advance written notice to the Commonwealth.
Purchase Price and Price Protection	Exhibit C sets forth the price by Product type (including whole units and repairable major components thereof) and the appropriate Commonwealth discounts. Prices for Product shall not increase and the Commonwealth discounts shall not decrease for a period of not less than two (2) years from the effective date of this Contract. Thereafter, any increase in price will be limited to once per twelve (12) month period and will not exceed the lesser of 3% or the annual increase in the Consumer Price Index for All Urban Consumers, All Cities Average, as published by the Bureau of Labor Statistics of the Department of Labor (insert URL), for the effective date of the increase compared with the same index one (1) year prior. Supplier will demonstrate the added value for any such requested price increase. Any such change in price will be submitted to the Commonwealth in writing in accordance with the above and will not become effective for sixty (60) days thereafter. Semi-annually, the prices for Product will be checked against the IDC Smart Index, or other applicable industry index, and the prices in Exhibit C will be appropriately reduced to ensure continued price competitiveness, if required. Supplier agrees to offer Product price reductions to ensure compliance with the Competitive Pricing Section set forth herein.
Purchase Payment Terms	Supplier is responsible for the accuracy of its billing information, and the Commonwealth is entitled to rely thereon. Supplier agrees not to issue invoices hereunder until Product has been shipped. Charges older than ninety (90) days may not be paid. Should Supplier repeatedly over bill the Commonwealth, the Commonwealth may assess a one percent (1%) charge for the amount over billed for each month that such over billing continues. In the event Product is "shipped short", as defined above, payment will not be due until the required user documentation is provided. If there are any disputed items, the Commonwealth will pay all undisputed charges and promptly notify Supplier in writing of any disputed amount. Supplier shall thereupon review its records, and, if it does not concur with the Commonwealth, provide the Commonwealth with documentation to support the charge. All payment terms are net thirty (30) days upon receipt of correct invoice.
Product Acceptance Criteria	All Product and Services are subject to inspection and testing by the Commonwealth and any that does not meet or exceed the Specifications may be rejected. The Commonwealth shall be given thirty (30) days from the completion of installation by the Supplier (or thirty (30) days after delivery if the Commonwealth installed) to test, evaluate and accept the materials, equipment, software and services delivered or furnished under this Contract (provided that the Authorized User, in its sole discretion, may accept the same prior to expiration to the thirty (30) day period). If the Supplier's Product or Services fail to meet the Specifications, then the same may be rejected and returned to the Supplier. Such rejection will exempt the Commonwealth from all related costs incurred by the Supplier. Acceptance shall be effective for the purpose of determining title to that which is delivered and for making payment, however, acceptance by the Commonwealth following testing and evaluation during the thirty (30) day period shall not be conclusive that the Product or Services conform in all respects to the Specifications. In the event that the Commonwealth discovers nonconformance after acceptance, whether due to a latent defect or otherwise, the Supplier shall take whatever action is necessary to conform the Product or Services to the Specifications, including but not limited to modification or replacement of the same. The Supplier's failure to do so shall constitute breach for which the Commonwealth may exercise the remedies provided in the section herein entitled "Term and Termination," in addition to and not in lieu of any other remedies available under Virginia law.

Product Discontinuation	During the term of this Contract, if any Product listed on Exhibit C is discontinued and Supplier does not offer a substitute acceptable to the Commonwealth, Supplier will meet the Commonwealth's needs for the discontinued Product for so long as the Commonwealth places firm orders for that Product type. Additionally, Supplier shall make available to the Commonwealth maintenance parts for discontinued Product for five (5) years from the date of such discontinuation.
Supplier's Report of Sales	The Supplier must report the quarterly dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales under this Contract by calendar quarter; i.e., January through March, April though June, July through September, and October through December. The dollar value of a sale is the price paid by the Authorized User for Products and Services on an order as recorded by the Supplier. The reported contract sales value must include the Industrial Funding Adjustment, as delineated in paragraph entitled "Industrial Funding Adjustment". The Supplier shall provide this report in hard copy to the Controller, VITA, and a copy of the report to the attention of Supply Chain Management, VITA, both at the address of notice and within thirty (30) days after the end of each quarterly reporting period as defined herein. The report must show each individual item and quantities purchased and the purchaser. The report is required to be hard copy. VITA may at a later time, agree to an electronic version of the report, however, in lieu of any express agreement by both parties as to the electronic format, the Commonwealth will only accept a hardcopy version. Sale may be defined as; 1) when the Commonwealth pays the purchase price, or 2) when the Commonwealth accepts the Products or 3) other as defined by the Supplier.
Industrial Funding Adjustment	The Supplier must pay VITA an Industrial Funding Adjustment (IFA). The Supplier must remit the IFA within thirty (30) days after the end of each quarterly reporting period as established in the clause entitled "Supplier's Report of Sales". The IFA equals two percent (2%) of the total quarterly sales reported. Supplier shall remit the IFA together with a copy of the Supplier's Report of Sales as delineated in the paragraph herein entitled "Supplier's Report of Sales". The IFA reimburses the Commonwealth and defrays the costs for IT procurement and the administration of the subsequent awards. The IFA amount due must be paid by check with identification of "Contract number", "report amounts", and "report period", on either the check stub or other remittance material. VITA may at its discretion, agree to an electronic funds transfer, in lieu of a check, however in the absence of an express written agreement from VITA that validates agreement, then the payment shall be made by check as described herein made payable to the Controller, VITA. If the full amount of the IFA is not paid within thirty (30) calendar days after the end of the applicable reporting period, it shall constitute a Contract debt to the Commonwealth, and the Commonwealth may exercise all rights and remedies available under law. Failure to submit sales reports, falsification of sales reports, and or failure to pay the IFA in a timely manner may result in termination or cancellation of this Contract. Willful failure or refusal to furnish the required reports, falsification of sales reports, or failure to make timely payment of the IFA constitutes sufficient cause for terminating this Contract for default. It is the intent of the Commonwealth to capture 2% of all sales, including temporary reduced pricing, fire sales, one time sales, trade ins, promotional items that have been marked down and all sales to the Commonwealth under this Contract.
TERM AND TERMINATION	This Contract is effective and legally binding as of the date set forth above and, unless terminated as provided herein, or extended by mutual written agreement of the Parties, shall continue until terminated as provided herein. The Commonwealth may terminate this Contract, in whole or in part, with respect to the purchase of Product upon not less than (XX) days prior written notice at any time for any reason. Except for month to month service, The Commonwealth may terminate the Maintenance Contract Exhibit upon written notice to Supplier prior to each anniversary date of the Maintenance Contract Exhibit, as provided therein. Supplier may terminate this Contract for cause in accordance with the Dispute Resolution Section herein. Upon termination, the Commonwealth will have no future liability except for Services rendered or Product delivered by Supplier prior to the termination date. All funds for payment of goods or services ordered under this Contract are subject to the availability of legislative appropriation

	for this purpose. In the event of non-appropriation of funds by the General Assembly for the items under this Contract, the Commonwealth will terminate this Contract for those goods or services for which funds have not been appropriated. Written notice will be provided to the Supplier as soon as possible after legislative action is completed. If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate this Contract for goods or services dependent on such federal funds without further obligation.	
Delivery	Supplier shall deliver all Product purchased hereunder F.O.B. destination, with such destination being the "ship to" address as specified in the applicable Order. The method of shipment shall be determined by the Authorized Users and set forth in the Order. Supplier shall bear all risk of loss of or damage to the Product until such Product is received by the Authorized Users and shall arrange and pay for all transportation and insurance sufficient to fully protect the Product while in transit. Each shipment shall include a packing slip indicating the Authorized Users's Order number, the part number, a description of the Product shipped and the quantity shipped. Each package in any shipment shall be numbered, shall have stenciled on one end and one side a description of the quantity of Product contained therein by part number and description and shall conspicuously display the number of the package in that shipment which contains the packing slip. If required by the Authorized Users, Supplier will bar code all packages shipped. If any loss to, or damage of, the Product occurs prior to receipt of delivery by the Authorized Users, Supplier will immediately provide a replacement item. Title shall pass upon such delivery. Supplier shall make available all appropriate and/or related user documentation at the time of delivery of the first unit of each different Product type. Product delivered without the appropriate and required documentation will be considered "shipped short" and will continue as same until the applicable documentation has been received.	
Product Acceptance Criteria	All Product and Services are subject to inspection and testing by the Commonwealth and any that does not meet or exceed the Specifications may be rejected. The Commonwealth shall be given thirty (30) days from the completion of installation by the Supplier (or thirty (30) days after delivery if the Commonwealth installed) to test, evaluate and accept the materials, equipment, software and services delivered or furnished under this Contract (provided that the Authorized User, in its sole discretion, may accept the same prior to expiration to the thirty (30) day period). If the Supplier's Product or Services fail to meet the Specifications, then the same may be rejected and returned to the Supplier. Such rejection will exempt the Commonwealth from all related costs incurred by the Supplier. Acceptance shall be effective for the purpose of determining title to that which is delivered and for making payment, however, acceptance by the Commonwealth following testing and evaluation during the thirty (30) day period shall not be conclusive that the Product or Services conform in all respects to the Specifications. In the event that the Commonwealth discovers nonconformance after acceptance, whether due to a latent defect or otherwise, the Supplier shall take whatever action is necessary to conform the Product or Services to the Specifications, including but not limited to modification or replacement of the same. The Supplier's failure to do so shall constitute breach for which the Commonwealth may exercise the remedies provided in the section herein entitled "Term and Termination," in addition to and not in lieu of any other remedies available under Virginia law.	e