

**CONTRACT VA-100917-CRE  
BETWEEN  
THE COMMONWEALTH OF VIRGINIA  
AND  
CREATIVE RECYCLING SERVICES, INC.**

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THE COMMONWEALTH OF VIRGINIA  
AND  
CREATIVE RECYCLING SERVICES, INC.**

**1. SCOPE OF AGREEMENT**

This is an agreement (the "Contract" or "Agreement") between the Commonwealth of Virginia ("Commonwealth" or "Department of General Services" or "DGS") and CREATIVE RECYCLING SERVICES, INC. (the "Contractor"), FEIN# 27-0291960 a Florida corporation having its principal place of business at 8108 Krauss Boulevard, Suite 110, Tampa, Florida 33619 for the establishment of a statewide Master Ordering Agreement for the use by all State Agencies, Institutions, and other public bodies as defined in § 2.2-4301, entitled "Definitions" of the *Virginia Public Procurement Act (VPPA)* as amended, and hereinafter referred to as "Authorized Users," to provide Secure Data Destruction and Recycling (SDDR) Services ("Services") to expunge all sensitive or confidential state data, or personal identifying information of citizens of the Commonwealth from information technology (IT) equipment deemed surplus and scheduled for disposal per applicable Virginia code, and any other additional support deemed integral to the delivery of Services, pursuant to the Commonwealth's Request For Proposal #LWA-2010-0319, dated March 19, 2010 (the "RFP") and Contractor's proposal, dated May 24, 2010 in response thereto.

**2. INTERPRETATION OF AGREEMENT**

As used in this Agreement, "product" and "deliverables" shall include all related materials and documentation developed and provided in the performance of Contract Services, whether in machine-readable or printed form, and produced or provided pursuant to this Contract, or any Order resulting from this Contract.

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

The documents comprising this Agreement, and their order of precedence in case of conflict, are: (1) this Contract VA-100917-CRE, consisting of terms and conditions labeled 1 through 75, including all Attachments hereto; (2) all executed Orders and Attachments referencing Contract VA-100917-CRE; (3) the RFP LWA-2010-0319; and (4) the Contractor's proposal dated May 24, 2010 submitted in response to the RFP. The foregoing documents represent the complete and final Agreement of the parties with respect to the subject matter of this Agreement.

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

### 3. VENDORS MANUAL

This contract is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in Section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at <http://www.eva.virginia.gov> under "Manuals."

### 4. APPLICABLE LAWS AND COURTS

This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.

### 5. ANTI-DISCRIMINATION

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

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

A. During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

B. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

## **6. ETHICS IN PUBLIC CONTRACTING**

The Contractor certifies that their proposal was made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

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

By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

## **8. DEBARMENT STATUS**

The Contractor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

## **9. ANTITRUST**

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

## **10. PAYMENT**

A. To Prime Contractor:

1. Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual Contractors) or the federal employer identification

number (for proprietorships, partnerships, and corporations).

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

B. To Subcontractors:

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

3. Each prime Contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
4. The Commonwealth of Virginia encourages Contractors and subcontractors to accept electronic and credit card payments.

#### **11. PRECEDENCE OF TERMS**

The following General Terms and Conditions *VENDORS MANUAL*, *APPLICABLE LAWS AND COURTS*, *ANTI-DISCRIMINATION*, *ETHICS IN PUBLIC CONTRACTING*, *IMMIGRATION REFORM AND CONTROL ACT OF 1986*, *DEBARMENT STATUS*, *ANTITRUST*, *TERMS AND CONDITIONS*, *CLARIFICATION OF TERMS*, AND *PAYMENT* shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

#### **12. QUALIFICATIONS OF CONTRACTOR**

The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the Contractor to perform the services/furnish the goods. The Commonwealth reserves the right to inspect, without advance notice, Contractor's physical facilities at any time during the initial term and any subsequent renewal periods, to satisfy questions regarding the Contractor's capabilities.

#### **13. TESTING AND INSPECTION**

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

#### **14. ASSIGNMENT OF CONTRACT**

A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.

#### **15. CHANGES TO THE CONTRACT**

Changes can be made to the contract in any of the following ways:

- A. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

B. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one (1) of the following methods:

- 1 By mutual agreement between the parties in writing; or
- 2 By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the Contractor's records and/or to determine the correct number of units independently; or
- 3 By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

## 16. DEFAULT

In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

## 17. TAXES

Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request.

Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

## 18. INSURANCE

The Contractor certifies it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The Contractor and any subcontractors shall maintain this insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

### MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED

- A. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three (3) or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
- B. Employer's Liability - \$100,000.
- C. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. **The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.**
- D. Automobile Liability - \$1,000,000 per occurrence.

## 19. DRUG-FREE WORKPLACE

During the performance of this contract, the Contractor agrees to:

- A. Provide a drug-free workplace for the Contractor's employees;
- B. Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- C. State in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and
- D. Include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of

work done in connection with a specific contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

## **20. NONDISCRIMINATION OF CONTRACTORS**

A Contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the Contractor employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

## **21. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION**

The eVA Internet electronic procurement solution, website portal <http://www.eVA.virginia.gov> streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service.

- A. eVA Basic Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, electronic bidding, and the ability to research historical procurement data available in the eVA purchase transaction data warehouse.
- B. eVA Premium Vendor Registration Service: \$25 Annual Registration Fee plus the appropriate order Transaction Fee specified below. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments.
- C. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
- D. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
  - 1. DMBE-certified Small Businesses: 1%, capped at \$500 per order.

2. Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.

## **22. AVAILABILITY OF FUNDS**

It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

## **23. AUTHORITY TO CONDUCT BUSINESS IN THE COMMONWEALTH**

Contractor hereby warrants and certifies that it is authorized to transact business in the Commonwealth in accordance with § 2.2-4311.2 of the *Code of Virginia*, as a domestic or foreign business entity as required by the State Corporation Commission, if such is required by law. Such status shall be maintained throughout the term of the Contract, or any extension or renewal thereafter. In the event the Commonwealth should determine that the Contractor is in violation of this requirement, then the Parties hereby agree that the Contract is voidable at the sole discretion of the Commonwealth, and that Contractor shall bear all expenses for the completion of any work in progress or the transition of Services.

## **24. NON-APPROPRIATION**

All funds for payment of Services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Legislature for the items under this Contract, the Commonwealth will terminate this Contract for those services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

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

## **25. TERM**

The initial term contract period will be for two (2) years from date of award. All Orders and related documents shall survive the period of performance stated in this section until such time as all Orders (executed prior to the expiration date of the Contract) have been completely performed.

## **26. RENEWAL OF CONTRACT**

This contract may be renewed at the sole discretion of the Commonwealth, for up to four (4) additional one (1) year successive periods under the terms and conditions of the original contract and upon mutual written agreement between the parties. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period, of the Commonwealth's intent to renew the Contract.

## 27. PRICE ADJUSTMENTS

At its sole discretion, the Commonwealth may permit price adjustments only at the time of Contract renewal, and only where verified to the satisfaction of the Contracting Officer. The contract pricing for any renewal period following the Initial Term shall not exceed the lesser of: a) 3% of the contract pricing for the prior term, or; b) the contract pricing for the prior period, increased/decreased by more than the percentage increase/decrease of the United States (US) Department of Labor's (DOL) Bureau of Labor Statistics' (BLS) "Services" category of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) section of the Consumer Price Index for the latest 12 months for which statistics are available. (<http://stats.bls.gov/news.release/cpi.t04.htm>)

Contractor shall give not less than 30 days advance notice of any price increase request, with documentation, to the Contracting Officer. The Contracting Officer will notify the using agencies and Contractor in writing of the effective date of any approved increase. However, the contractor shall fill all purchase orders received prior to the effective date of the price adjustment at the old contract prices.

**"Across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the Commonwealth and reflected in subsequent invoices.**

Any such change in price shall be submitted to DGS in writing in accordance with the above and shall not become effective for sixty (60) days thereafter.

## 28. ADDITION/DELETION OF ITEMS AND SERVICES

This contract may be modified in order to add and/or delete items and services as deemed necessary by the Commonwealth of Virginia which is of like or similar nature. Such modifications may only be made by the representatives who are authorized to do so. No modifications to this contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing.

## 29. ADVERTISING AND USE OF PROPRIETARY MARKS

Contractor shall not use the name of the Commonwealth, or any entity thereof, or refer to the Commonwealth, or any entity thereof, directly or indirectly in any form of advertising without receiving prior written consent of the Commonwealth, or the relevant entity first. This includes, but is not limited to, any press release, formal advertisement, and product literature or client list in advertising and promotional materials. In no event may Contractor use a proprietary mark of the Commonwealth, or any entity thereof, without receiving the prior written consent of the Commonwealth or that entity.

**30. AUDIT**

The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

**31. AUTHORIZED REPRESENTATIVES**

This Contract may be modified in accordance with § 2.2-4309 of the *Code of Virginia*. Such modifications may only be made by the representatives authorized to do so denoted below, or their duly authorized designees. No modifications to this contract shall be effective unless in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing.

Any contract issued on a firm fixed price basis may not be increased more than twenty-five percent (25%) or \$50,000, whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or their authorized designee.

Authorized Representatives:

**COMMONWEALTH OF VIRGINIA**  
Director, DGS Procurement  
Department of General Services  
Procurement Services Unit  
1100 Bank Street, Suite 724  
Richmond, Virginia 23219-3639  
Email: [procurement@dgs.virginia.gov](mailto:procurement@dgs.virginia.gov)

**CONTRACTOR**  
CREATIVE RECYCLING SERVICES, INC.  
ATTN: Jim Kristof, Vice President  
Sales and Procurement  
8108 Krauss Boulevard, Suite 110  
Tampa, Florida 33619  
Email: [jkristof@cserecycling.com](mailto:jkristof@cserecycling.com)

**32. BANKRUPTCY**

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

### **33. BREACH**

The Contractor shall be deemed in breach of this agreement if the Contractor:

- A. Fails to provide any service by the specified delivery date;
- B. Repeatedly fails to respond to requests for required service within the time set forth in this Agreement;
- C. Fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten (10) days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or
- D. Fails to provide a written response to the Commonwealth Show Cause Notice within ten (10) days after receiving same.

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

### **34. CANCELLATION OF CONTRACT**

The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

### **35. COMPETITIVE PRICING**

Contractor 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 commercial or government customer of Contractor. If Contractor enters into any arrangements with another customer of Contractor or with an Authorized User to provide Solutions, Services, or component products under more favorable prices, as the prices may be indicated on Contractor's current U.S. and International price list or comparable document, then this Contract shall be deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and Contractor shall immediately notify DGS of such change.

**36. CONDITIONS OF PAYMENT**

All Services provided by Contractor pursuant to this Contract shall be performed to the satisfaction of the ordering Agency and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. Contractor shall not receive payment for defective material or work found by the ordering Agency to be unsatisfactory, or performed in violation of federal, state, or local laws, ordinances, rules, or regulations.

**37. CONFIDENTIALITY (Commonwealth)**

The Commonwealth agrees that neither it nor its employees, representatives, or agents shall knowingly divulge any proprietary information with respect to the operation of the software, the technology embodied therein, or any other trade secret or proprietary information related thereto, except as specifically authorized by the contractor in writing or as required by the Freedom of Information Act or similar law. It shall be the contractor's responsibility to fully comply with § 2.2-4342F of the *Code of Virginia*. All trade secrets or proprietary information must be identified in writing or other tangible form and conspicuously labeled as "proprietary" either prior to or at the time of submission to the Commonwealth.

**38. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION (Contractor)**

Contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this Agreement, and will not be divulged without the individual's and the agency's written consent and only in accordance with federal law or the *Code of Virginia*. Contractors who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the agency of any breach or suspected breach in the security of such information. Contractors shall allow the agency to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.

**39. CONTRACTOR ACCESS TO COMMONWEALTH LOCATION/S**

Commonwealth shall grant to Contractor personnel such access to the Commonwealth location as may be necessary or appropriate for Contractor to perform its obligations under this Agreement, subject to all security issues. For any individual Commonwealth location, the Contractor may be required to undergo additional security procedures that may include but not be limited to; records verification, submission of photos and or fingerprints, etc. The Contractor may at any time, for any Commonwealth location, be required to undertake the execution and completion for each individual employee, the requirement of the submission of additional forms that the Commonwealth would consider reasonable for security measures. These forms may include the individual employee's agreement that all Commonwealth information that is garnered while at the Commonwealth site is confidential and proprietary. Any unauthorized release of proprietary information by the Contractor or Contractor's employees shall constitute a breach of this Agreement.

#### **40. CONTRACTOR'S REPORT OF SALES AND REVENUE**

Contractor must report the dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales and revenue under this Contract monthly. The dollar value of a sale is the price paid by the user for products and services on a Contract order as recorded by the Contractor. The reported Contract sales value and revenue must include the Industrial Funding Adjustment, as delineated in paragraph entitled "Industrial Funding Adjustment." The Contractor shall provide this report via email to the Director of OSPM, in an Excel spreadsheet format within ten (10) days after the end of each monthly reporting period as defined herein. The Contractor shall define "sale" prior to the first reporting period and then shall maintain that definition through out the term of this Agreement. Sale may be defined as; 1) when the Commonwealth pays the purchase price, or 2) when the Commonwealth accepts the Product/Service or 3) other as defined by the Contractor.

#### **41. CONTRACTUAL DISPUTES**

In accordance with Section 2.2-4363 of the *Code of Virginia*, Contractual claims, whether from money or other relief, shall be submitted in writing to the purchasing agency no later than 60 days after final payment; however, written notice of the Contractor's intention to file such claim must be given to such agency at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The purchasing agency 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*.

The Department of General Services, its officers, agents and employees, including without limitation, the Contracting Officers, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent of the Commonwealth agency purchasing and receiving the goods or services in question and need not be joined as a party to any dispute that may arise there under.

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' remedies include the right to terminate any license or support services hereunder.

#### **42. CREATION OF INTELLECTUAL PROPERTY**

All copyrightable material created pursuant to this Agreement shall be considered work made for hire and shall belong exclusively to the Commonwealth. If the whole or any part of

such copyrightable material cannot be deemed work made for hire, the Contractor agrees to assign, and does hereby irrevocably assign, the copyright thereto to the Commonwealth, and shall execute and deliver such further documents as the Commonwealth may reasonably request for the purposes of acknowledging or implementing such assignment.

The Contractor warrants that no individual, other than regular employees of the Contractor or Commonwealth working within the scope of their employment, shall participate in the creation of any copyrightable material to be delivered under this Agreement, unless such individual and his or her employer, if any, have signed an intellectual property agreement satisfactory to the Commonwealth.

The Commonwealth shall have all rights, title and interest in or to any invention reduced to practice through the performance of this Agreement.

The Contractor hereby agrees that, notwithstanding anything else in this Agreement, in the event of any breach of this Agreement by the Commonwealth, the Contractor's remedy shall not include any right to rescind, or otherwise revoke or invalidate, the provisions of this Section. Similarly, no termination of the Agreement by the Commonwealth shall have the effect of rescinding the provisions of this Section.

#### **43. CREDITS**

Any credits due the State under the terms of this Contract may be applied against Contractor's invoices with appropriate information attached to enable validation.

#### **44. DISTRIBUTION OF REVENUE**

Twenty percent (20%) of all revenue generated under this Agreement will be returned to the Department of General Services' Office of Surplus Property Management in order to defray the costs for the administration of the contract. The Contractor must remit the total amount due within ten (10) days after the end of each monthly reporting period as established in the clause entitled "Contractor's Report of Sales and Revenue."

The revenue 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. DGS/OSPM 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 DGS/OSPM that validates agreement, then payment shall be made by check as described herein made payable to the "Treasurer, Commonwealth of Virginia" and delivered to DGS/OSPM, OSPM Director, 1910 Darbytown Road, Richmond, VA, 23231.

The remaining 80% will be returned to the Authorized User responsible for initiating the order.

#### **45. eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS**

It is anticipated that the contract will result in multiple purchase orders (i.e., one (1) for each delivery requirement) with the eVA transaction fee specified below assessed for each order

- A. For orders issued prior to August 16, 2006, the Vendor Transaction Fee is 1%, capped at a maximum of \$500 per order.
- B. For orders issued August 16, 2006 and after, the Vendor Transaction Fee is:
  - 1 DMBE-certified Small Businesses: 1%, Capped at \$500 per order.
  - 2 Businesses that are not DMBE-certified Small Businesses: 1%, Capped at \$1,500 per order.

The eVA transaction fee will be assessed approximately 30 days after each purchase order is issued. Any adjustments (increases/decreases) will be handled through eVA change orders.

Internet electronic procurement solution, website portal <http://www.eva.virginia.gov>, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

If this solicitation is for a term contract, failure to provide an electronic catalog (price list) or index page catalog for items awarded will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from [www.eVA.virginia.gov](http://www.eVA.virginia.gov). Contractors should email Catalog or Index Page information to [eVA-catalog-manager@dgs.virginia.gov](mailto:eVA-catalog-manager@dgs.virginia.gov)

#### **46. EXTRA CHARGES NOT ALLOWED**

Proposed pricing shall be for complete delivery ready for the Commonwealth's use, and shall include all applicable freight and delivery charges; extra charges will not be allowed.

#### **47. FAILURE TO DELIVER**

In the event Contractor fails for any reason to deliver in a timely manner or according to Contract terms the Services or items set forth in the Schedule, then the Commonwealth, at its own discretion, may give Contractor oral or written notice of such breach. Once notice by the State is sent or given, then the State may immediately procure service(s) from another source. In no event shall the State be held to pay Contractor any costs incurred by Contractor, including but not limited to ordering, developing, or delivering the service(s) which are subject of the State's notice of breach. This remedy is in addition to and not in lieu of any other remedy the Commonwealth may have under this agreement and the laws of the Commonwealth of Virginia.

#### **48. INDEMNIFICATION**

Supplier shall indemnify, defend, and hold the Commonwealth, DGS, the Authorized User, their officers, directors, employees and agents harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable expenses suffered by, accrued against, or charged to or recoverable from the Commonwealth, DGS, the Authorized User, their officers, directors, agents or employees, on account of the failure of Supplier to perform its obligations pursuant this Section.

#### **49. INDUSTRIAL FUNDING ADJUSTMENT**

Contractor must pay DGS, an Industrial Funding Adjustment (IFA). The Contractor must remit the IFA within ten (10) days after the end of each monthly reporting period as established in the clause entitled "Contractor's Report of Sales and Revenue." The IFA equals two percent (2%) of the total monthly sales reported. Contractor shall remit the IFA together with a copy of the "Contractor's Report of Sales and Revenue" as delineated in the paragraph herein entitled "Contractor's Report of Sales and Revenue." The IFA reimburses the Commonwealth and defrays the costs for procurement and the administration of the subsequent contract award(s). 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. DGS 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 DGS that validates agreement, then payment shall be made by check as described herein made payable to the "Treasurer, Commonwealth of Virginia" and delivered to DGS, Procurement Services Director, 1100 Bank Street, Suite 724, Richmond, VA 23219.

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 of Virginia, and the State 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 Agreement.

#### **50. INSPECTION OF JOB SITE**

Contractor's signature on this Contract constitutes certification that Contractor has inspected the job site and is aware of the conditions under which work must be accomplished. Claims, as a result of failure to inspect the job site, will not be considered by the Commonwealth.

#### **51. LIMITATION OF LIABILITY**

To the maximum extent permitted by applicable law, the Contractor's liability under this contract for loss or damages to government property caused by the use of any defective or

deficient product and/or services delivered under this Contract shall not exceed the greater of \$1,000,000 dollars or two (2) times the total amount of the affected order to be paid to the Contractor resulting from a statement of work (SOW) under this contract as of the date of the event or circumstance giving rise to Contractor's liability. The Contractor will not be liable under this contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. The above limitation of liability is per incident. The limitation and exclusion of damages in the foregoing sentences will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.

## **52. LIMITATION OF COST**

It is hereby stipulated and agreed that the total cost to the Commonwealth for the performance of each Order will be within the "Not to Exceed" funding limitation set forth in the Order, and the Contractor agrees to perform the work specified and all obligations under the Order within such funding limitation. The Contractor agrees to notify the Commonwealth in writing no later than when the billable amounts reach eighty percent (80%) of the funding limitation and will include in such notification an estimate to complete the requirements of the Order.

The Commonwealth will not be obligated to reimburse the Contractor for billing in excess of appropriated funding up to the funding limitation set forth in the Order, and the Contractor shall not be obligated to continue performance of the Order or to incur costs in excess of the funding limitations unless and until a written amendment to the Order increasing the funding limitation is approved by the User.

## **53. LOBBYING AND INTEGRITY**

Contractors are cautioned that communications with individuals other than the Contracting Officer may result in incorrect and/or insufficient information being provided. In addition, the Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give anyone any gratuity for the benefit of or at the direction or request of any state officer or employee.

Upon request of the Department of General Services, the Contractor shall provide any type of information the Agency deems relevant to the Contractor's integrity or responsibility to provide the services or goods, described herein.

## **54. METHOD OF PAYMENT**

### **A. Invoices:**

All invoices shall be rendered promptly to DGS or any Authorized User after all Services

covered by the invoice have been provided. Where performance is completed in less than one (1) month, the Contractor shall invoice the User for the full amount of the order at the completion thereof. Where performance is longer than one (1) month, the Contractor shall invoice monthly in arrears. No invoice may include any cost other than those identified in the Agreement or individual Order referencing this Contract. Invoices shall provide at a minimum:

1. Name of Authorized User (ordering entity)
2. User contact name
3. Type and description of the Service
4. Customer number
5. Work order number
6. Invoice number
7. Invoice date
8. Monthly charges
9. Contract Number, and
10. Contractor's Taxpayer Identification Number (TIN)

Contractor shall render invoices for any Authorized User in accordance with the instructions contained in an eVA Order from such Authorized User.

**B. Payment:**

For valid invoices in the amount of \$5,000.01 or more, payment will be made monthly within thirty (30) days of receipt of a valid invoice for all services provided during the previous month. The Contractor shall submit a valid invoice to the following address by the tenth (10<sup>th</sup>) day of the month following the month in which services were rendered. Invoices shall be mailed to:

Department of General Services  
ATTN Fiscal Services  
Post Office Box 404  
Richmond, Virginia 23218-0404

Or for valid invoices in the amount of \$5,000.00 or less, payment may be made using the Commonwealth of Virginia's Small Purchase Charge Card (SPCC.)

**55. NON-VISUAL ACCESS TO TECHNOLOGY**

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

- A. effective, interactive control and use of the Technology shall be readily achievable by non-visual means;
- B. the Technology equipped for non-visual access shall be compatible with information

technology used by other individuals with whom any blind or visually impaired user of the technology interacts;

- C. Non-visual Access Technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
- D. the Technology for non-visual access shall have the capability of providing equivalent access by non-visual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

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

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

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

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

## 56. ORDERS

Authorized Users may order Services from this Contract by one of the following methods:

- A. eVA: An eVA order issued by an Authorized User through the Commonwealth's electronic procurement website portal <http://www.eva.virginia.gov>.
- B. Purchase Order (PO): An official PO form issued by an Authorized User
- C. Charge Card
  - 1. Any order/payment transaction processed through the Commonwealth's contract with Bank of America (BOA), or any then-current contracted card provider. Each Charge Card Order must not exceed \$5,000, or the then-current charge card limit.
  - 2. Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA, under contract for use by the ordering Authorized User.

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

authority to modify this Agreement.

#### 57. ORDER CHANGES

Any changes to be made once an order has been provided to the Contractor must be made between the Authorized User and the Contractor. Both parties shall agree in writing to any changes in the scope of work and any increase or decrease in the price that may result as a consequence of the changes. **No Order changes may be made verbally. Only the Authorized User has the right to issue a change to any Order.**

#### 58. PATENT/COPYRIGHT PROTECTION

Contractor, at its own expense, shall defend any suit brought against the Commonwealth for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Contractor's or Commonwealth's use of any equipment, software, materials or information prepared, developed or delivered in connection with performance of this Agreement. In such suit, Contractor shall indemnify the Commonwealth, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit.

The purchasing agency shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of Section 2.2-507, Section 2.2-510 of the *Code of Virginia* or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

The Contractor shall not be required to indemnify the Commonwealth for liability arising solely out of the Commonwealth's own specifications or design or solely from the combination of equipment or software furnished hereunder with any equipment or software not supplied by the Contractor.

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

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

**59. PRIME CONTRACTOR RESPONSIBILITIES**

The Contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The Contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.

**60. QUALIFIED DEVICES**

Qualified devices are reflected on Attachment A, entitled "Pricing and Services Schedule" attached hereto. Contractor shall not remove items from Authorized User's location unless identified in the aforementioned "Pricing and Services Schedule."

Contractor shall not handle any devices that are known to have been used in the nuclear, hazardous biological or hazardous chemical environment.

**61. QUALIFIED PERSONNEL**

All Services to be performed as specified in this Contract shall be performed by qualified technicians properly trained to perform such services. The Commonwealth reserves the right to require proof of training at any time during the term of the contract. The Commonwealth reserves the right to request replacement of Contractor's personnel if the work product of Contractor's personnel is deemed in any way unsuitable by the Contract Administrator or their designee.

**62. QUANTITIES**

Quantities set forth in the solicitation were estimates only, and the Contractor shall supply at negotiated prices actual quantities as ordered, regardless of whether such total quantities are more or less than those shown.

**63. RISK OF LOSS OR DAMAGE**

The Contractor shall have the risk of loss or damage wherein the equipment is removed from the Authorized User's premises. Risk shall include intellectual property contained on the system(s).

**64. SECURITY COMPLIANCE**

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

Authorized User. Contractor shall also comply with all applicable federal, state and local laws and regulations. For any individual Authorized User location, security procedures may include but not be limited to: background checks, records verification, photographing, and fingerprinting of Contractor's employees or agents. Contractor may, at any time, be required to execute and complete, for each individual Contractor employee or agent, additional forms which may include non-disclosure agreements to be signed by Contractor's employees or agents acknowledging that all Authorized User information with which such employees and agents come into contact while at the Authorized User site is confidential and proprietary. Any unauthorized release of proprietary or Personal information by the Contractor or an employee or agent of Contractor shall constitute a breach of its obligations under this Section and the Contract.

Contractor shall immediately notify DGS and Authorized User, if applicable, of any Breach of Unencrypted and Unredacted Personal Information, as those terms are defined in Virginia Code 18.2-186.6, and other personal identifying information, such as insurance data or date of birth, provided by DGS or Authorized User to Contractor. Contractor shall provide DGS the opportunity to participate in the investigation of the Breach and to exercise control over reporting the unauthorized disclosure, to the extent permitted by law.

#### **65. SEVERABILITY**

Each paragraph and provision of this Contract is severable from the entire Contract, and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.

#### **66. SMALL, WOMEN, AND MINORITY-OWNED BUSINESS SUBCONTRACTING**

It is the goal of the Commonwealth that 40% of its purchases be made from DMBE-certified small businesses. This includes discretionary spending in prime contracts and subcontracts. Unless the Contractor is registered as a DMBE-certified small business and where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to DMBE-certified small businesses. This shall not exclude DMBE-certified women-owned and minority-owned businesses when they have received DMBE small business certification. No Contractor or Subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Department of Minority Business Enterprise (DMBE).

In instances where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the Contractor will assist the Subcontractor in completing the DMBE online certification application <http://www.dmb.e.virginia.gov/> to become either a DMBE certified Small Business, Women-owned Business or a Minority-owned Business.

Contractor agrees to report the use of any small business subcontractors on a monthly basis by providing the purchasing office with a minimum of the following information electronically by email in spreadsheet format about the DMBE-certified Small business(es), as follows: name of small business, phone number, DMBE-certification number, DMBE category type\*,

taxpayer identification number (T.I.N.), type of product/service provided, and total dollar amount subcontracted for the reporting period. A suggested format follows:

Firm Name & Phone Number	DMBE Cert. Number	DMBE Category *	T.I.N.	Type of Goods / Services	Amount (\$)
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
TOTAL					_____

\* Small (S), Woman-owned (W), Minority-owned (M) Business Certification.

Reports are to be emailed by the 5th of each month to: [procurement@dqs.virginia.gov](mailto:procurement@dqs.virginia.gov).

#### 67. SUBCONTRACTS

No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed Subcontractor(s.) The Contractor shall, however, remain fully liable and responsible for the work to be done by its Subcontractor(s) and shall assure compliance with all requirements of the contract.

#### 68. TERMINATION AND CANCELLATION

The Commonwealth shall have the unilateral right to terminate this Contract for Default, in the event that any one or more of the following events of default occur or continue during the term of this Agreement;

- A. Contractor fails to deliver equipment or services required by this Agreement or
- B. Contractor repeatedly fails to respond to requests for maintenance or other services within the time limits set forth in the Agreement or
- C. Contractor breaches any of the other terms set forth within this Agreement or
- D. Contractor fails to cure any breach after receiving a "Show Cause Notice" identifying the failure, and providing the Contractor ten (10) days to cure the failure/nonperformance. If the Contractor fails to answer the cure notice, or does not correct the deficiencies noted, then the State may immediately terminate the Contract for Default.

In such event, the Commonwealth will only be liable for cost incurred to the date of termination. All costs of de-installation and return of the equipment will be the Contractor's expense.

The Commonwealth's failure to exercise its right to terminate for default under this provision shall not be construed as a waiver of its right to terminate, rescind or revoke

this Contract in the event of any subsequent breach of any provisions of this Agreement.

**69. TITLE**

Title to equipment is transferred to the Contractor at time of pick-up.

**70. TITLE TO SOFTWARE**

The Contractor represents and warrants that it is the sole owner of the software product or, if not the owner, has received all proper authorizations from the owner to license the software product, and has the full right and power to grant the rights contained in this Contract. Contractor further warrants and represents that the software product is of original development, and that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property rights of any other person or organization.

**71. TERMINATION FOR CONVENIENCE**

The Commonwealth may terminate this Contract in whole or in part for convenience at any time by submitting to the Contractor a writing, sixty (60) days prior to the date of Termination. The Commonwealth shall be obligated for all outstanding Orders, according to the Contract, subsequent to this Termination. The Commonwealth shall not be obligated for any other costs in the event of Termination for convenience.

**72. TRANSITION OF SERVICES**

Prior to or upon expiration or termination of this Contract and at the request of DGS, Contractor shall provide all assistance as DGS may reasonably require to transition any Contract-related Services to any other supplier with whom DGS contracts for provision of Solution-related Services. This obligation may extend beyond expiration or termination of the Contract for a period not to extend six (6) months. In the event of a termination for breach or default of Contractor or a termination due to Contractor's status as a party excluded from Federal Procurement and Non-procurement Programs, Contractor shall provide such assistance at no charge or fee to the Commonwealth; otherwise, Contractor shall provide such assistance at a reasonable hourly rate as delineated in the Contract Price Schedule, or any lesser amount as may be negotiated between the Parties.

**73. WARRANTY**

Contractor agrees that the services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the contractor gives any customer for such services and that the rights and remedies provided therein are in addition to and do not limit those available to the Commonwealth by any other clause of this solicitation.

**74. WARRANTY (Services)**

Contractor hereby certifies and warrants that all Commonwealth IT assets shall be handled in accordance this Agreement and any procedures developed there from and that all state

and Authorized User confidential data and personal identifying information shall be expunged in accordance with any then current data removal and information security policies and standards established by the Virginia Information Technologies Agency (VITA) during the term of this Agreement, or any renewal thereof.

**75. WEB INTERFACE**

The Contractor shall have a web interface available within 14 days of the signing of the contract. This website will incorporate the functionality described through this Contract, and any Attachments, contained herein.

**76. WORK SITE DAMAGES**

Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the Commonwealth's satisfaction at the Contractor's expense.

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

**CREATIVE RECYCLING SERVICES, INC.**

BY: *James Kristof*

NAME: James Kristof  
Printed

TITLE: VP Sales & Procurement

DATE: 9/20/10

**COMMONWEALTH OF VIRGINIA**

BY: *Linda W. Arrington*

NAME: LINDA W. ARRINGTON  
Printed

TITLE: Sr. Contracting Officer

DATE: 9/21/2010

**ATTACHMENT A  
TO  
AGREEMENT VA-100917-CRE  
BETWEEN THE  
DEPARTMENT OF GENERAL SERVICES  
AND  
CREATIVE RECYCLING SERVICES, INC.**

***PRICING AND SERVICES SCHEDULE***

Attachment "A" is hereby incorporated into and made an integral part of Contract Number VA-100917-CRE between the Commonwealth of Virginia's Department of General Services, ("Commonwealth" or "State" or "DGS") and CREATIVE RECYCLING SERVICES, INC. ("Contractor".)

In the event of any discrepancy between this Attachment "A" and Contract Number VA-100917-CRE, the provisions of Contract VA-100917-CRE shall control.

**1. LISTING OF PRODUCTS, SERVICES, AND PRICING**

All requirements stated in the Commonwealth's RFP# LWA-2010-0319, dated March 19, 2010 Section III, entitled "Statement of Needs"; and the Solution, including all Services, and integral products to the Solution, as applicable and as delineated in Contractor's proposal, dated May 24, 2010 submitted in response thereto, for the provision of Secure Data Destruction and Recycling Services, as delineated therein, and offered through the DGS Office of Surplus Property Management (OSPM) for the use by all Commonwealth Authorized Users, in accordance with the following pricing schedule:

**A. SERVICES PRICING**

The following pricing schedule reflects Services to be provided to the Commonwealth or Authorized User under this Agreement. This schedule represents the Contractor's all-encompassing fees for the negotiated Services.

All charges associated with the Services shall be included, and the Commonwealth shall not be liable for fees or charges that are not set forth herein. These charges include, but are not limited to, all labor, tools, supervision, equipment, materials, parts, incidentals and transportation required to perform negotiated Services.

**Pricing Schedule:**

Item #	Item Description	Price Per Item	Price Per Pound
1.	Computer, Desktop (no peripherals)	-\$6.00	N/A
2.	Computer, Desktop (no hard drive)	-\$3.00	N/A
3.	Computer, Laptop	-\$15.00	N/A
4.	Computer, Mainframe	-\$5.00	N/A
5.	CPU System (includes keyboard, mouse, and power cord)	-\$6.00	N/A
6.	Drives and Memory for Sanitization	\$0	\$0
7.	Facsimile	\$0	\$0
8.	LAN/WAN Components	\$0	\$0
9.	Media, Magnetic or Optical	\$0	N/A
10.	Misc. Components and Small Electronics Includes: Adapters, Batteries, Chargers, Hubs, Keyboards, Miscellaneous Cables, Mice, Switches, Uninterruptable Power Supply (UPS)	N/A	\$0.15
11.	Monitors/Terminals (excluding televisions)	\$0	\$0
12.	Monitors, LCD (Unbroken)	-\$5.00	N/A
13.	On-site Hard Drive Destruction	\$5.00	N/A
14.	PDA	-\$1.00	N/A
15.	Phones, Cell	-\$0.50	\$0
16.	Photocopier	\$0	\$0
17.	Printer, with or without Storage (Includes: Black, Color, or Plotter)	\$0	\$0
18.	Router	-\$1.00	N/A
19.	Server	-\$5.00	N/A
20.	Television, Console and Tabletop	\$7.50	\$0.15
21.	Uninterrupted Power Supply (UPS)	\$0	\$0

**B. IMPLEMENTATION PLAN**

System implementation and timeline shall be in accordance with Contractor's proposal, dated May 24, 2010, and as supplemented herein as Contract Attachment B, entitled "*Implementation Plan.*"

**2. SHIP TO / BILL TO ADDRESSES**

Ordering Officers shall include shipping and billing addresses on individual Orders referencing this Contract.

**3. DELIVERY SCHEDULE**

The delivery schedule of Services shall be as specified herein, or in any executed Attachment or Order referencing the Agreement, or within five (5) days After Receipt of the

Order (ARO) if no date is specified. If delivery of all Services is not completed within the time specified, then DGS may cancel the individual Order without further obligation.

#### 4. **DGS POINTS OF CONTACT**

##### **Contract Administration/Compliance**

Brad Crawford, Director  
Department of General Services  
Office of Surplus Property Management  
1910 Darbytown Road  
Richmond, Virginia 23231  
Telephone: (804) 236-3670  
Fax: (804) 236-3663  
Email: [statesurplus@dgs.virginia.gov](mailto:statesurplus@dgs.virginia.gov)  
Web: <http://www.dgs.virginia.gov/surplus>

##### **Contract Information**

Linda W. Arrington, CPPB, VCO  
Senior Contracting Officer  
Department of General Services  
Procurement Services  
1100 Bank Street, STE 724  
Richmond, Virginia 23219-3639  
Telephone: (804) 371-0932  
Fax: (804) 786-1593  
Email: [linda.arrington@dgs.virginia.gov](mailto:linda.arrington@dgs.virginia.gov)  
or [procurement@dgs.virginia.gov](mailto:procurement@dgs.virginia.gov)  
Web: <http://www.dgs.virginia.gov>

#### 5. **CONTRACTOR POINTS-OF-CONTACT**

##### **Primary Contact**

CREATIVE RECYCLING SERVICES, INC.  
ATTN: Jim Kristof  
Vice President of Sales & Procurement  
Sales and Procurement  
8108 Krauss Blvd, Suite 110  
Tampa, Florida 33619  
Telephone: (800) 797-2061  
Fax: (813) 626-1248  
Cell: (727) 643-3704  
E-mail: [jkristof@crserecycling.com](mailto:jkristof@crserecycling.com)  
Web: <http://www.crserecycling.com>

##### **Billing/Administration**

CREATIVE RECYCLING SERVICES, INC.  
ATTN: Regina Leverett  
Contract Specialist  
8108 Krauss Blvd, Suite 110  
Tampa, FL 33619  
Telephone: (800) 797-2061  
Fax: (813) 626-1248  
Email: [rleverett@crserecycling.com](mailto:rleverett@crserecycling.com)

**ATTACHMENT B  
TO  
AGREEMENT VA-100917-CRE  
BETWEEN THE  
DEPARTMENT OF GENERAL SERVICES  
AND  
CREATIVE RECYCLING SERVICES, INC.**

***IMPLEMENTATION PLAN***

Attachment "B" is hereby incorporated into and made an integral part of Contract Number VA-100917-CRE between the Commonwealth of Virginia's Department of General Services, ("Commonwealth" or "State" or "DGS") and CREATIVE RECYCLING SERVICES, INC. ("Contractor".)

In the event of any discrepancy between this Attachment "B" and Contract Number VA-100917-CRE, the provisions of Contract VA-100917-CRE shall control.

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**KEY ELEMENTS OF IMPLEMENTATION METHODOLOGY**

- A. **Service Commencement Date:** Contractor shall commence with service on November 1, 2010.
- B. **General Requirements:** Contractor shall provide all labor, tools, supervision, equipment, materials, transportation, and incidentals required to coordinate the registration, collection, validation, data removal, certification, and recycling of technology devices within the terms, conditions provisions, and schedules provided herein.
1. **Online User Registration:** The Contractor shall create an online web interface capability through a Secure Data Destruction and Recycling (SDDR) System within ninety (90) days of contract award. This system will allow a User facility access to services and should involve a two-part authority and registration process to ensure that only the correct authority can order the reallocation of devices within the User facility.

During the system design phase and final acceptance by DGS, the Contractor shall be required to perform these SDDR Service functions manually.

2. **User Documentation:** In coordination with DGS/OSPM, the Contractor will be expected to complete within thirty (30) days of contract award an initial iteration of all necessary documentation to implement Services on a statewide basis. Final documentation to be developed thirty (30) days following approval by DGS/OSPM. Such documentation shall be consistent with all contract documentation, following award, be available online, and be provided in a readily downloadable format. Documentation includes, but not be limited to the following:

- a. **Administrative Procedures Manual:** An Administrative Procedures Manual (APM) to describe the overall program, system processes, and how the program works; describe roles, responsibilities, tasks, and other requirements. The APM shall include, but not be limited to, the following:

- Authorized User Procedures for Registration and Document Processing
- SDDR and Device Registration
- Authorized User Inspection and Acceptance Procedures
- Invoice Instructions and Guidance
- Pricing Schedules
- Equipment Processing
- System Instructions

Any other documentation needed to facilitate the use of the Services by any state and local government.

- b. **Communications and Marketing Plan:** Contractor shall assist DGS/OSPM in its communications in marketing these services to eligible Commonwealth state and local government entities.

- c. **Collection and Validation:** The Contractor shall provide requested services at the User facility or may be required to collect equipment from one (1) central location at the User facility and transport to their own secure location where the Services will be conducted. The Contractor will be required to verify the accuracy of the User facility's equipment manifest on-site at the User facility prior to packing and loading all equipment. Equipment information will be checked for accuracy against the User facility's equipment registration information. Modifications to device information will be made if necessary and the User facility notified in writing of the changes.

If it is required that a surplus item(s) be picked up and stored at the contractor's site, the Contractor's representative will sign a receipt for the item(s), and thereby transfer responsibility of the item to the Contractor. These responsibilities include, but are not limited to the following:

- i. To have commercial insurance on the item(s) in an amount at least equal to the residual value of the item(s).
- ii. To transport the item(s) to a secure location of the contractor's choice.
- iii. To secure the item(s) until authorized disposal is completed.

- d. **Data Removal:** Before any data removal process begins, device(s) must be disconnected from any network. Any damage caused to the network or any device(s) on the network due to failure to adhere to this requirement shall be the responsibility of the Contractor.

- a. **Hard Drive:** Currently the three (3) acceptable methods are:
    - i. Overwriting
    - ii. Degaussing
    - iii. Physical Destruction
  - b. **Non-Volatile Memory Device:** Data removal may be accomplished by removing the battery or electricity supply or by such other method recommended by the manufacturer for the device(s) where the battery is not removable. Examples Include, but are not limited to, all computer equipment that has memory such as personal computers, Personal Digital Assistant (PDAs), routers, firewalls, and switches.
  - c. **Other Electronic Media Data:** Sensitive data on media other than hard drives or devices that hold data or configuration in non-volatile memory must be overwritten, degaussed, or destroyed. Disintegration, incineration, pulverization, shredding, or melting is acceptable means of destruction. Examples include, but are not limited to, tapes, diskettes, Compact Discs (CDs), Digital Versatile Disc or Digital Video Disc (DVDs), worm devices, and Universal Serial Bus (USB) data storage devices.
3. **Certification:** The Contractor must document the data has been effectively removed and provide certification to the Authorized User within 30 days of pick-up.
  4. **Disposal:** The Contractor shall dispose of all devices in a manner that is fully compliant with all Federal and State regulations.
- C. **Security and Sanitization Requirements:** All security controls, standards, measures, or other criteria must minimally meet all of the required Virginia Information Technologies Agency (VITA) policies, standards, and guidelines, particularly Information Security Standards (COV ITRM Standard SEC501-01, dated August 11, 2009 (Revision 5)) as described at <http://www.vita.virginia.gov/library/default.aspx?id=537#securityPSGs> as well as ITRM Standard entitled "Removal of Commonwealth Data from Surplus Computer Hard Drives and Electronic Media Standard" (SEC514-03) dated March 15, 2008 and "IT Information Security Standard" (SEC501-1) dated August 11, 2009, as described at <http://www.vita.virginia.gov/library/default.aspx?id=537#securityPSGs> or the then current policy.
- D. **Contractor's Personnel:** The Contractor may at any time, for any Commonwealth location, be required to undertake the execution and completion for each individual employee, the requirement of the submission of additional forms that the Commonwealth would consider reasonable for security measures. These forms may include the individual employee's agreement that all Commonwealth information that is garnered while at the Commonwealth site is confidential and proprietary. Any unauthorized release of proprietary information by the Contractor or Contractor's employees shall constitute a breach of this Agreement.

All Services shall be performed by technicians who are qualified through factory or other training and are directly employed and supervised by the Contractor.

The DGS reserves the right to reject any Contractor's service personnel who in the agency's judgment appear to be unqualified. In such an event, the Contractor shall immediately replace the technician with one (1) who is mutually acceptable to both the Contractor and the DGS.

The Contractor's employees shall exhibit professional conduct at all times and shall demonstrate a high level of customer service.

The Contractor shall be responsible for controlling employee conduct, assuring that its employees and representatives are not boisterous or rude, and assuring that they are not engaging in any destructive or criminal activity.

Contractor's employees shall be capable of communicating and comprehending the English language (both verbally and in writing) to Full Professional Proficiency (as defined by Interagency Language Roundtable "ILR" Level 4 standards), and as demonstrated by the ability to use English fluently and accurately at all levels pertinent to professional and Contract needs, with the ability to be completely, fully, and easily understood by the end-user.

The Contractor hereby warrants and certifies that all services shall be performed in a first-class skillful manner.

A dedicated CRS Customer Service Rep will coordinate all aspects of the Agreement. A web portal at [www.crserecycling.com](http://www.crserecycling.com) will be created for applicable Commonwealth contract users. CRS North Carolina's Special Projects Team will handle pick-ups and data sanitization processes.

1. Name and title of individual(s) responsible for overall management of contract.

- Brian Diesselhorst, Overall Contract Manager
- Nick Jackson, Day to Day Project Manager / Operations POC
- Jen Rivero, Day to Day Assistant Project Manager / Secondary Operations POC
- Mike Caesar, IT (POC)

2. Location of office(s) and hours of operation.

Creative Recycling Services, Inc.  
619 Distribution Dr.  
Morrisville, NC 27560  
Hours of Operation: 8:00am – 5:00pm Monday - Friday

E. **Service Hours and Holiday Schedule:** Services are to be scheduled with the User facility and shall be conducted during normal working hours; typically, 8:15 a.m. to 5:00 p.m., Monday through Friday, except on State recognized holidays. State recognized holidays are as follows:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1 <sup>st</sup>
Lee-Jackson Day	Friday preceding the 3 <sup>rd</sup> Monday in January
Martin Luther King, Jr. Day	3 <sup>rd</sup> Monday in January
George Washington Day	3 <sup>rd</sup> Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4 <sup>th</sup> *
Labor Day	1 <sup>st</sup> Monday in September
Columbus Day	2 <sup>nd</sup> Monday in October
Veteran's Day	November 11 <sup>th</sup> *
Thanksgiving	4 <sup>th</sup> Thursday in November and the Friday after
Christmas	December 25 <sup>th</sup> *

\*In the event that any of these holidays fall on a Saturday or Sunday, the locations will be closed on the Friday before or the Monday after, respectively.

Contractor will not be compensated for overtime hours worked that begin before or extend beyond the hours stated above.

- F. **Locations:** Equipment will require pick up and removal by Contractor from within one (1) or more of the following districts:



- Bristol District (1)** (includes Bland, Buchanan, Dickerson, Grayson, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe counties)
- Salem District (2)** (includes Bedford, Botetourt, Carroll, Craig, Floyd, Franklin, Giles, Henry, Montgomery, Patrick, Pulaski, and Roanoke counties)
- Lynchburg District (3)** (includes Amherst, Appomattox, Buckingham, Campbell, Charlotte, Cumberland, Halifax, Nelson, Pittsylvania, and Prince Edward counties)
- Richmond District (4)** (includes Amelia, Brunswick, Charles City, Chesterfield, Dinwiddie, Goochland, Hanover, Henrico, Lunenburg, Mecklenburg, New Kent, Nottoway, Powhatan, and Prince George counties)
- Hampton Roads (5)** (includes Accomack, Greensville, Isle of Wight, James City, Northampton, Southampton, Surry, Sussex and York counties and the cities of Chesapeake, Emporia, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg)
- Fredericksburg District (6)** (includes Caroline, Essex, Gloucester, King & Queen, King

- George, King William, Lancaster, Mathews, Middlesex, Northumberland, Richmond, Spotsylvania, Stafford, and Westmoreland counties)
7. **Culpeper District (7)** (includes Albemarle, Culpeper, Fauquier, Fluvanna, Greene, Louisa, Madison, Orange, and Rappahannock counties)
  8. **Staunton District (8)** (includes Alleghany, Augusta, Bath, Clarke, Frederick, Highland, Page, Rockbridge, Rockingham, Shenandoah, and Warren counties)
  9. **Northern Virginia District (9)** (includes Arlington, Fairfax, Loudoun, and Prince William counties)

**G. Reporting and Delivery instructions**

During the term of the Contract, or any renewal period, the Contractor shall submit the following reports to the purchasing agency. Failure to comply with reporting and delivery requirements of this section may result in payment(s) being withheld until compliance with the plan is received and confirmed. The agency reserves the right to pursue other appropriate remedies to include, but not be limited to, termination for default. Reference clause entitled "Termination and Cancellation" herein.

Reports include, but are not limited to, the following:

**1. Utilization of Small Businesses and Business Owned by Women and Minorities**

Periodic Progress Reports will be submitted monthly to the Commonwealth's designated Contract Manager ("Contract Manager") and to the Commonwealth's designated Contract Administrator ("Contract Administrator"), during the Solution setup phase. Invoices will be submitted after setup phase is complete and after the Commonwealth's written acceptance of the Solution and thereafter, billed in arrears monthly.

Contractor will include a report on involvement of small businesses and businesses owned by women and minorities to the Contract Monitor, Department of General Services, Central Procurement Unit, 1100 Bank Street, Suite 724, Richmond, Virginia 23219; Attention: Procurement Manager Central Procurement Unit. This report should be submitted in electronic spreadsheet format via email to [procurement@dgs.virginia.gov](mailto:procurement@dgs.virginia.gov) no later than the 5th of each month. This report will specify actual dollars expended year to date, by month, with such businesses on this contract. This information shall be provided separately for small businesses, women-owned businesses and minority-owned businesses, as delineated herein under the section entitled "Small Business Subcontracting and Evidence of Compliance."

**2. Monthly Surplus and Data Removal Activities:** Reports reflecting Service activities shall be provided to OSPM by the 10<sup>th</sup> of each month:

- Contract Number
- Contractor's tax identification number
- User name
- Project name
- Order number
- Invoice date

- Invoice number
- User telephone number
- Type of service provided
- Total U. S. dollar value invoiced for services (dollar value of a sale is the price paid by the User for services under the contract as recorded by the Contractor.)
- Amount billed for services performed for previous month
- Amount invoiced to or returned to the Authorized User.
- Cumulative record of all contract sales and revenue, which shall be carried forward for the duration of the contract. A Contract sale is defined as the total of all invoices paid or revenue received by the Commonwealth during the reported month.

3. **Industrial Funding Adjustment (IFA)**: The Contractor shall submit IFA payment as detailed in clause entitled "Industrial Funding Adjustment" herein.

Failure to comply with reporting and payment requirements of this section may result in default of contract.

4. **Loss or Damage in Transit**: Whenever items are lost in transit from the User facility to the Contractor's site or the Contractor's site the DGS and the User facility shall be notified immediately. The Contractor shall perform an investigation into the loss and report its findings to DGS and the User facility no later than seven (7) business days after the incident occurred. The Contractor shall make every attempt to recover the lost item, including the use of local law enforcement resources if the loss of the item is found to be due to criminal intent. The Contractor may be responsible for the market value of lost property and may be required to reimburse OSPM for losses.
5. **Services Audit Tracking Requirement**: The Contractor shall maintain audit reports of all services performed on Commonwealth equipment. This audit record shall be available to the Contract Administrator, or other authorized representative of the Commonwealth, at any time.
6. **Final Actual Involvement Report**: The Contractor shall submit, prior to completion or at completion of the contract and prior to final payment, a report on the actual dollars spent with Small Businesses and businesses owned by Women and Minorities during the performance of this contract. At a minimum, this report shall include for each firm contracted with and for each such business class (i.e., small, Minority-owned, Women-owned) a comparison of the total actual dollars spent on this contract with the planned involvement of the firm and business class as specified in the proposal, and the actual percent of the total estimated contract value. See clause entitled "Small, Women, and Minority-Owned Business Subcontracting" for a suggested reporting format and additional information about the participation of small businesses owned by women and minorities in State procurement transactions.

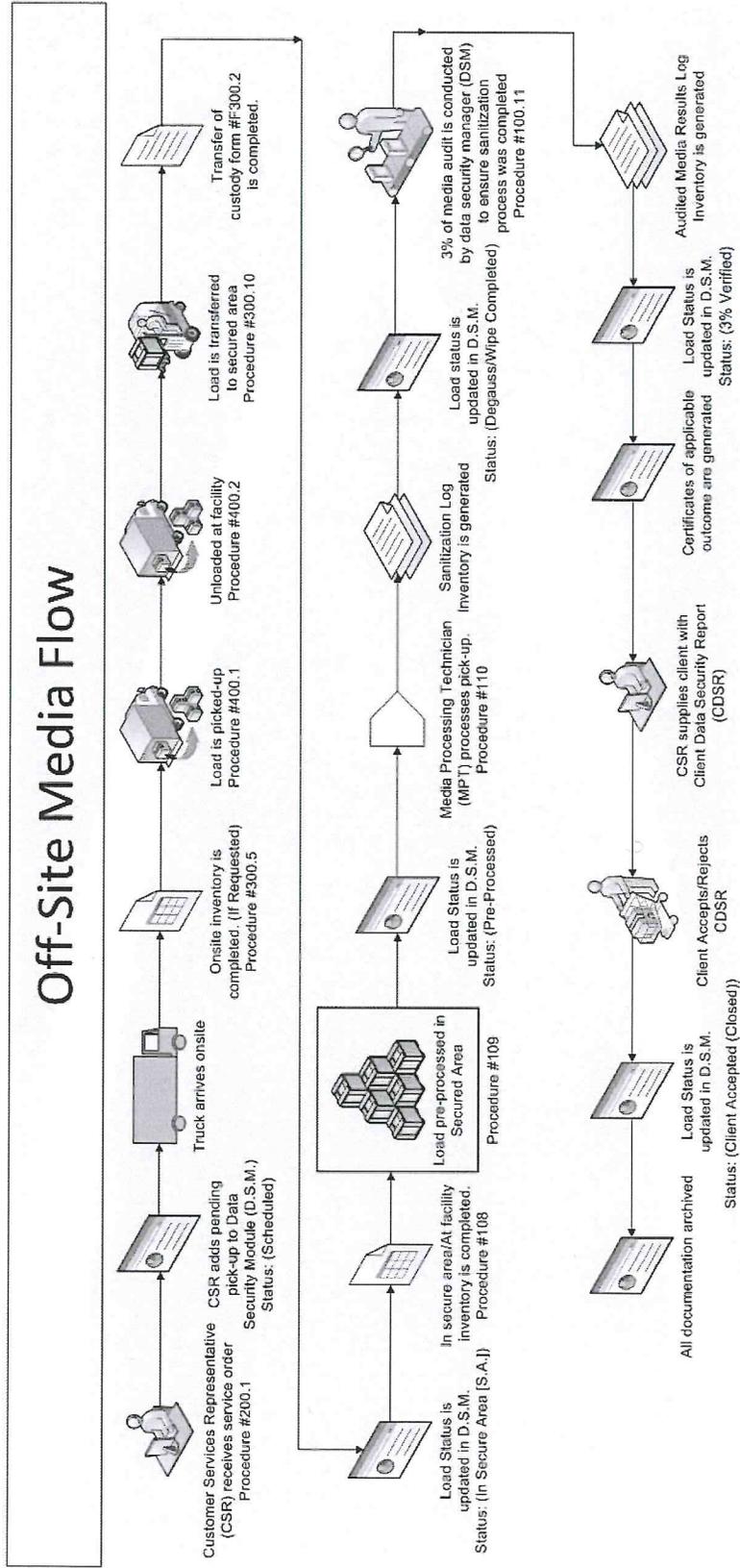


**ATTACHMENT D**

**OFF SITE MEDIA FLOW**

Attachment "D" is hereby incorporated into and made an integral part of Contract Number VA-100917-CRE between the Commonwealth of Virginia's Department of General Services, ("Commonwealth" or "State" or "DGS") and CREATIVE RECYCLING SERVICES, INC. ("Contractor".)

In the event of any discrepancy between this Attachment "D" and Contract Number VA-100917-CRE, the provisions of Contract VA-100917-CRE shall control.

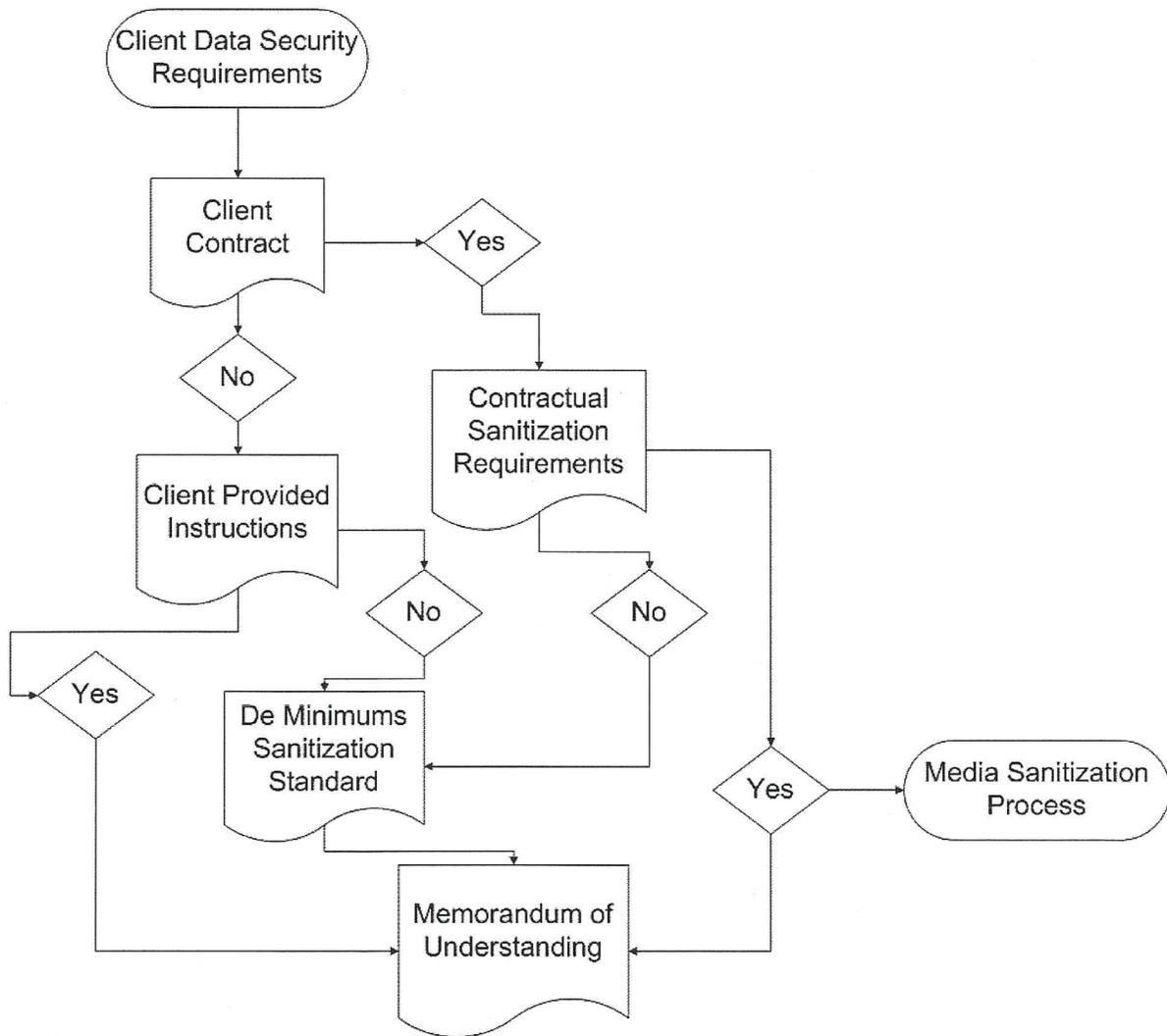


ATTACHMENT E

**CLIENT DATA SECURITY REQUIREMENTS**

Attachment "E" is hereby incorporated into and made an integral part of Contract Number VA-100917-CRE between the Commonwealth of Virginia's Department of General Services, ("Commonwealth" or "State" or "DGS") and CREATIVE RECYCLING SERVICES, INC. ("Contractor".)

In the event of any discrepancy between this Attachment "E" and Contract Number VA-100917-CRE, the provisions of Contract VA-100917-CRE shall control.



ATTACHMENT F

**MEDIA SANITIZATION PROCESS**

Attachment "F" is hereby incorporated into and made an integral part of Contract Number VA-100917-CRE between the Commonwealth of Virginia's Department of General Services, ("Commonwealth" or "State" or "DGS") and CREATIVE RECYCLING SERVICES, INC. ("Contractor".)

In the event of any discrepancy between this Attachment "F" and Contract Number VA-100917-CRE, the provisions of Contract VA-100917-CRE shall control.

