



VCU Procurement Services

January 29, 2021

Erica Allen
Director, SSGBC
Exela Enterprise Solutions, Inc.
8401 Corporate Dr., Suite 420
Landover, MD 20785-2277

RE: Contract #: 6767280SW/C0000199
Renewal No.: 1 of 2
Current Purchase Order: P000843

Procurement Services
University Purchasing

912 W Grace Street, 5th Floor
Box 980327
Richmond, Virginia 23284

804 828-1077
Fax: 804 828-7837
TDD: 1-800-828-1120
www.vcu.edu/procurement

Dear Ms. Allen:

Your firm's contract with Virginia Commonwealth University (VCU) for Mail Services expires on June 30, 2021. VCU intends to exercise the renewal of this contract in accordance with:

Section XII, Item EE of Contract #: 6767280SW;

Your signature constitutes your firm's acceptance of this renewal, to include the optional use language below.

OPTIONAL USE CONTRACT:

This contract is an optional use, requirements based contract. VCU is in no way required to make purchases from the Contractor and may, in its sole discretion, purchase the identical and/or similar goods/services from other sources. Any estimates/quantities identified on a purchase order issued against this contract do not represent a purchase commitment by VCU.

Services shall be provided in accordance with the contract for the renewal period: July 1, 2021 through June 30, 2026.

☐ Pricing remains the same as the previous contract period.

☒ Attached is the revised pricing in accordance with the contract terms. (Attachment A)

☒ By signing and submitting this contract renewal letter Contractor certifies that it will maintain the insurance coverages required at the time the contract was awarded. At renewal, Contractor shall have a new Certificate of Insurance listing VCU as the "Additional Insured", citing the contractor's name and contract number, e-mailed to ckersey2@vcu.edu.

Please return this document to me no later than February 8, 2021. Your response should be e-mailed to me at ckersey2@vcu.edu. If you have any questions, please contact me at (804) 828-0163.

Sincerely,

Christopher C. Kersey
Procurement Category Manager

Contract #: : 6767280SW

RESPONSE:

VP Approved GM
2/1/2021

Exela Enterprise Solutions, Inc.

Name of Firm

Srini Murali

Signature

SRINI MURALI

Name Printed

PRESIDENT, AMERICAS AND APAC

Title

02/05/2021

Date

02-01-21



ATTACHMENT A

CPI for Urban Wage Earners and Clerical Workers (CPI-W)
Original Data Value

Series Id: CWUR0000SAS
Not Seasonally Adjusted
Series Title: Services in U.S. city average, urban wage earners and clerical
Area: U.S. city average
Item: Services
Base Period: 1982-84=100
Years: 2010 to 2020

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual Change	% Change
2010	254,918	255,199	255,634	255,796	256,048	257,138	257,595	257,745	257,663	257,198	257,219	257,382	2,464	0.97%
2011	257,982	258,732	259,108	259,419	260,062	261,122	261,777	262,344	262,636	262,427	262,535	262,954	4,972	1.93%
2012	263,615	263,904	264,394	264,819	265,369	266,623	266,938	267,409	267,865	267,906	268,233	268,661	5,046	1.91%
2013	269,551	270,341	270,749	271,032	271,918	273,071	273,616	274,017	274,511	274,347	274,590	274,948	5,397	2.00%
2014	276,158	276,933	278,156	278,269	279,451	280,589	280,998	281,082	281,342	281,210	281,349	281,800	5,642	2.04%
2015	282,761	283,352	283,748	284,353	284,895	286,337	286,772	287,138	287,626	287,900	288,423	288,663	5,902	2.09%
2016	289,731	290,516	291,168	291,837	293,028	294,472	295,152	295,864	296,320	296,343	296,901	297,480	7,749	2.67%
2017	298,670	299,758	299,398	299,829	300,822	302,107	302,474	303,260	303,747	304,037	304,493	305,191	6,521	2.18%
2018	306,317	307,517	308,032	308,470	309,563	310,629	311,072	311,589	311,912	312,321	312,663	313,441	7,124	2.33%
2019	314,354	315,115	315,809	316,437	317,096	318,398	319,051	319,694	320,302	321,002	321,571	321,967	7,613	2.42%
2020	323,264	324,294	324,348	323,341	323,351	324,610	326,628	327,019	327,068	327,114	327,555	327,834	4,570	1.41%

Actual	
Dec	327,834
Jan	323,264
Diff	4,57
% Change	1.41%

Existing Monthly Contract Payment	\$ 50,343.50
New Monthly Contract Payment	\$ 51,055.21
Annualized Contract Payment Amount	\$ 612,662.52

**VCU**

**THIRD AMENDMENT TO CONTRACT NO.6767280SW
BY AND BETWEEN**

VIRGINIA COMMONWEALTH UNIVERSITY

AND

**EXELA ENTERPRISE SOLUTIONS, INC., FORMERLY KNOWN AS NOVITEX ENTERPRISE
SOLUTIONS, INC.**

This Third Amendment to Contract No.6767280SW by and between Virginia Commonwealth University, hereafter referred to as "VCU", and Exela Enterprise Solutions, Inc., formerly known as Novitex Enterprise Solutions, Inc., hereinafter referred to as "Exela", is entered into as of the date the last signature is affixed hereto.

WHEREAS, Exela and VCU entered into Contract No. 6767280SW ("Contract") on May 20, 2016;

WHEREAS, the Contract was modified by Amendment 2 on June 6, 2018;

WHEREAS, the parties agreed that Exela will purchase security equipment and installation services from Associated Alarm Enterprises, Inc. ("AAE");

WHEREAS, AAE was subsequently purchased by another company and can no longer provide the equipment and services to Exela; and

WHEREAS, Exela has engaged ADT LLC dba ADT Security Services ("ADT") to provide the equipment and services once provided by AAE.


NOW, THEREFORE, in consideration of the terms, covenants and conditions contained herein, the parties agree as follows:

1. The parties agree that all references to AAE in the Contract and amendments thereto shall be replaced with ADT.
2. Exela agrees to be solely responsible for all payments due to ADT and agrees to make such payments to ADT without the involvement of VCU. Exela agrees that ADT's only recourse for payment is with Exela, and not VCU.
3. Exela agrees to be solely liable for any and all claims, damages, injury, expense or loss arising from the services and equipment provided by ADT.
4. This Amendment shall be construed in connection with and as part of the Contract and shall modify and supersede all provisions contained in the Contract and its prior amendments relating to the subject matter set forth herein. Except as modified and expressly amended by this Amendment, all terms, conditions and covenants contained in the Contract and all prior amendments thereto are hereby ratified and shall be and remain in full force and effect.

[Signature page follows]

CONTRACTOR:

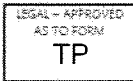
Exela Enterprise Solutions, Inc.

By: 

Name Printed: Michelle Deichmeister

Title: EVP

Date: 01/30/2019



PURCHASING AGENCY:

Virginia Commonwealth University

By: 

Name Printed: Mark E Roberts

Title: Interim Director Procurement Services

Date: 

**VCU**

Make it real.

SECOND AMENDMENT TO CONTRACT NO.6767280SW**BY AND BETWEEN****VIRGINIA COMMONWEALTH UNIVERSITY****AND****EXELA ENTERPRISE SOLUTIONS, INC., FORMERLY KNOWN AS NOVITEX ENTERPRISE SOLUTIONS, INC.**

This Second Amendment to Contract No.6767280SW by and between Virginia Commonwealth University; hereafter referred to as "VCU", and Exela Enterprise Solutions, Inc., formerly known as Novitex Enterprise Solutions, Inc., hereinafter referred to as "Exela", is entered into as of the 5th of June, 2018.

WHEREAS, Exela and VCU have previously entered into a Mail Services Contract dated May 20, 2016, pursuant to which Exela provides management services; and this contract was subsequently modified by Amendment 1 dated July 1, 2016;

WHEREAS, VCU and Exela agree that Exela will purchase, install, operate and own building access and security systems at Ownby Lane building (reference attached Associated Alarm Enterprises, Inc. Proposal);

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Exela agrees to purchase, install, operate and control building access and security system(s) located at Ownby Lane mail facility per proposal from Associated Alarm Enterprises, Inc. (attached).
2. Exela agrees to pay any future recurring costs associated with said building access and security system(s);
3. Exela agrees to be solely responsible for any and all liability for all of Exela's and Exela's employee contents within the Ownby Lane building.
4. VCU agrees to reimburse Exela for the purchase and installation costs amounting to \$5,559.00 per the proposal from Associated Alarm Enterprises, Inc. and agrees that any existing telecommunications savings resulting from the installation of the building access and security system(s) will belong to Exela.
5. This Amendment shall be construed in connection with and as part of the Contract and shall modify and supersede all provisions contained in the Contract relating to the subject matter set forth herein. Except as modified and expressly amended by this Amendment, all terms, conditions and covenants contained in the Contract and all prior amendments thereto are hereby ratified and shall be and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

CONTRACTOR:

Exela Enterprise Solutions, Inc., Inc.

By Michelle Tierney
Name Michelle Tierney
IP: 173.3.146.67
DocID: 20180605093806509

Title: Executive Vice President

Date: 6/5/2018

PURCHASING AGENCY:

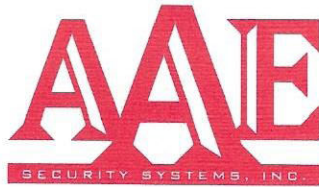
Virginia Commonwealth University

By: Brenda Mowen

Name Printed: Brenda Mowen

Title: Director Procurement Services
Brenda Mowen
Project Director of Procurement Services

Date: 6/6/18



Associated Alarm Enterprises, Inc.
P.O. Box 9
Hanover, Virginia 23069-0009
(804) 730-3386 • (800) 435-3750
Fax (804) 746-2948
DCJS License #11-1771

February 27, 2018 (Tuesday)

[Revised]

VCU Mail Services

1622 Ownby Drive

Richmond, Virginia 23220

Attn; Mr. James T. Daniels

Ref; Card Access, Alarm & Video Systems

Proposal to supply, install, monitor & warranty systems mentioned above. All equipment will be warrantied for (1) one year from time of completion. The quotes below will show the materials needed to complete the jobs of card access, security alarm & video systems. As for now we are waiting for the okay on the video system and a start-up time for the others.

Alarm System Package

1 - Honeywell Vista 20P Control Panel 16 Zones (rear storeroom area)	
1 - Honeywell Alpha-English 6160RF Keypad Wireless Receiver (front door)	
1 - Honeywell Wave2 Siren Speaker (rear wall)	
1 - Bosch DS-ISCPPR1W6 60'X 60' Tri-Tech Motion (center rear)	
1 - Yuasa 12vdc 7ah Stand-By Battery Supply (in control)	
All doors + 2 O/H's and glass breaks connected and working	\$ 750.00

Alarm Add-Ons

1 - Honeywell 6160 Keypad Arming Station (needed @ rear door)	\$ 175.00
1 - Honeywell 4 Button 5834-4 Remote Arm/Disarm Keyfob	<u>\$ 60.00</u>
Total Alarm System Install w/1 Year Warranty on New Equipment	\$ 985.00

Monitoring of Alarm System (Billed Quarterly) at \$30.00 monthly = \$ 90.00

Access Control System

1 - Linear Control System LN-ES1C (rear storeroom)	\$ 718.50
1 - Linear Extra Door w/License Add-On (coupled w/above)	\$ 324.00
1 - Instrument Box 12"x 12"x 4" Beige (rear storeroom)	\$ 33.75
1 - Instrument Box Lock	\$ 6.75
1 - Altronix Power Supply 6-24vdc @ 2.5a (in beige box)	\$ 41.25
1 - Transformer Plug-In MB-MGT1640 16.5VAC 40VA (rear storeroom)	\$ 22.50
1 - Yuasa 12vdc 7ah Stand-By Battery Supply (in beige box)	<u>\$ 33.25</u>
Total Material	\$1180.00
Labor	<u>\$1200.00</u>
Total Install Cost w/1 Year Warranty on New Equipment	\$2380.00

CCTV Video System

1 - Honeywell HRHH4042 1080P P Series HQA/SD 4ch 2TB DVR	\$ 360.00
1 - W BOX OE-19LED HD 720P Resolution 19" Color Monitor	\$ 195.00
3 - Speco SO-HTINT70T 2.8-12mm DC VF Lens Bullet Cameras \$ 333 ea.	<u>\$ 999.00</u>
Total Video Material Cost W/Internet Connection	\$1554.00
Labor	<u>\$ 640.00</u>
Total Install w/1 Year Warranty on New Equipment	\$2194.00

See Page 2

A.A.E. Security Systems thanks you for this opportunity to quote these systems to you. If any questions please contact us at (804) 730-3386 anytime.

Associated Alarm Enterprises, Inc.

A handwritten signature in cursive script, reading "Charlie B. Clendenin V". The signature is written in dark ink and has a long, sweeping horizontal line extending from the end of the name.

Mr. Charlie B. Clendenin V - Pres.



VCU

Make it real.

**FIRST AMENDMENT TO CONTRACT NO.6767280SW
BY AND BETWEEN
VIRGINIA COMMONWEALTH UNIVERSITY
AND
NOVITEX ENTERPRISE SOLUTIONS, INC.**

This First Amendment to Contract No.6767280SW by and between Virginia Commonwealth University; hereafter referred to as "VCU", and Novitex Enterprise Solutions, hereinafter referred to as "Novitex", is entered into as of the 1st of July, 2016.

WHEREAS, Novitex and VCU have previously entered into a Mail Services Contract dated May 20, 2016, pursuant to which Novitex provides management services;

WHEREAS, VCU and Novitex agree that Novitex may utilize VCU owned vehicles to provide contractually required services until Novitex has received its own vehicles to provide services per the contract and revise the automobile insurance language contained in the Contract;

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. VCU and Novitex agree to amend the terms and conditions of the VCU Mail Services Contract (RFP#6767280SW), by incorporating into the contract Section XI, General Terms and Conditions, Insurance, Item T.4 – Automobile Liability - \$1,000,000 per occurrence and adding below language for Automobile Liability to be now be referenced as Item T.4 – Automobile Insurance, as follows:

T.4 - Automobile Insurance:

Novitex and any Subcontractor will maintain a policy of Automobile Liability insurance coverage for their use of VCU-owned vehicles with a combined single limit of coverage for bodily injury and property damage of not less than \$1,000,000 per accident. This coverage will extend to any vehicles owned, hired, or borrowed by Novitex that are used to provide services to VCU. With respect to vehicles not owned by VCU that are used by Novitex, it is understood that VCU will not be responsible for payment of any damages or repairs to those vehicles, unless such damages result from negligence on the part of VCU. Novitex will be responsible for damages to any third-party vehicles or other property damage or bodily injury caused by Novitex while operating any vehicles related to this Contract and Amendment No. 1.

It is further agreed that Novitex will pay for any damage to VCU-owned vehicles that occurs while being operated by Novitex.*

*Additional Insured: VCU will be named as an Additional Insured, on all policies required by this Amendment No. 1. The proper name is: "The Commonwealth of Virginia, and the Rector and Visitors of Virginia Commonwealth University, its officers, employees and agents." Novitex will provide a certificate of coverage evidencing automobile liability insurance by the effective date of the contract.

2. VCU agrees to pay for routine vehicle maintenance costs such as oil changes, tire rotations, replacement parts not attributable to any accident, and other non accident related replacement items such as tires, winterizing services, etc. Novitex agrees to notify VCU's Mail Service's Contract Administrator of any maintenance costs that may exceed \$1,000 in advance for any one-time occurrence for approval. The aforementioned vehicle maintenance shall be direct billed to VCU.

3. Novitex agrees to reimburse VCU for all vehicle fuel charges to operate the vehicles.

4. This Amendment shall be construed in connection with and as part of the Contract and shall modify and supersede all provisions contained in the Contract relating to the subject matter set forth herein. Except as modified and expressly amended by this Amendment, all terms, conditions and covenants contained in the Contract and all prior amendments thereto are hereby ratified and shall be and remain in full force and effect.

CONTRACTOR:

Novitex Enterprise Solutions, Inc.

By: 

Name Printed: Michelle Tierney

Title: Executive Vice President

Date: 6/29/2016

PURCHASING AGENCY:

Virginia Commonwealth University

By: 

Name Printed: Karel Gray

Title: ~~Vice President for Finance and Budget~~

Date:

Brenda Mowen
Director of Procurement Services

**COMMONWEALTH OF VIRGINIA
STANDARD CONTRACT**

Contract Number: 6767280SW

This contract entered into by Novitex Enterprise Solutions, Inc., hereinafter called the "Contractor" and Commonwealth of Virginia, Virginia Commonwealth University (VCU), called the "Purchasing Agency".

WITNESSETH that the Contractor and the Purchasing Agency, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

PERIOD OF THE PERFORMANCE: From July 1, 2016 through June 30, 2021. This contract may be renewed upon written agreement of both parties for up to (2) five-year renewal periods.

SCOPE OF CONTRACT: The Contractor shall provide the goods/services to the Purchasing Agency as set forth in the Contract Documents.

The contract documents shall consist of:

- (1) This signed form;
- (2) The Request for Proposals No.:6767280SW dated December 13, 2016, Attachments A-L, including Addendum 1-7;
- (3) The Contractor's Proposal dated January 28, 2016;
- (4) Revised Pricing Schedule Dated March 22, 2016; and
- (5) Attachment "A" Negotiation Modification Summary dated April 26, 2016.

All of which documents are incorporated herein by reference.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

CONTRACTOR:

Novitex Enterprise Solutions, Inc.

E-Signed : 05/06/2016 01:33 PM CST

By: Michelle Tierney

Name: michelle.tierney@novitex.com
IP: 70.193.213.186

Certified Electronic Signature
DocID: 20160506131315633

Title: Evp

Date: 05/06/2016

PURCHASING AGENCY:

Virginia Commonwealth University

By: Karol Gray

Name Printed: Karol Gray, Vice President

Title: VCU Finance and Budget

Date: 5/20/16

**VIRGINIA COMMONWEALTH UNIVERSITY
NEGOTIATIONS & MODIFICATION SUMMARY
ATTACHMENT A**

**Mailing Services
RFP No.: 6767280SW
April 26, 2016**

SUMMARY OF NEGOTIATIONS

1. Tab B. Delivery Services:

Novitex Response: Is removed from the Aux Services and will be billed direct to the departments through the internal chargeback process. We understand this to be correct based on previous clarifying questions. Can you please confirm?

VCU Response: The Delivery Service Fee (Credit) reduces the Price for Services before the Delivery Service Credit to reflect departmental payments for Alternate Delivery Services program. The Contractor Price tab in the RFP Price spreadsheet is intended to all capture costs to provide Mail Operations, including the Alternate Delivery Services program, from the various spreadsheet tabs (Contract Expenditures, Labor, and Management Fee & Profit and Delivery Service Credit). As departments are paying a portion of the overall costs, VCU will then "centrally" fund and pay the Contractor for the Proposal Price – Net Price for Services Offered for the term of the agreement. The Alternate Delivery Service departmental payments may vary over time depending upon number of departments enrolled and price for service. VCU does not guarantee departmental participation.

The "Future Process" indicated above is confirmed.

Novitex acknowledges and accepts VCU response.

2. Regarding Offeror proposal Section 7, Notes on Pricing Assumptions. The University clarifies that Delivery Service (Alternate Delivery Service) is no longer a part of the Auxiliary Profit Share Program. Please acknowledge understanding.

Novitex Response: Novitex acknowledges understanding that the Alternate Delivery Services is no longer a part of the Auxiliary Profit Share Program.

VCU acknowledges and accepts Novitex response.

3. The Offeror is to complete the RFP Price Sheet tab labelled B. Delivery Service. The Offeror shall be required to invoice departments as part of the billing cycle to collect the departmental payment(s). The University will pay the Proposal Price - Net Price for Services Offered as the contract payment from its central funds. Please acknowledge understanding and submit a revised RFP Price Sheet.

Novitex acknowledges and accepts VCU request.

4. The University clarifies that the current contract parameters associated with the first \$5,000 and splitting the remaining profit 50%/50% are not incorporated into this Request for Proposal. Please acknowledge understanding.

Novitex acknowledges and accepted VCU request.

5. The University requests clarification pertaining to Labor credits applied in RFP Price Sheet TAB A. Labor (2) tab column T, should such credits remain upon submission of a revised RFP Price Sheet, if submitted.

Novitex Response: The labor credits applied in RFP Price Sheet TAB A. Labor (2) tab column T, reflect employees that are full time but work less than a 40 hour work week. This is not a credit, but reflective of true labor hours and benefits.

VCU acknowledges and accepts Novitex response.

6. The university requests a revised RFP Price sheet with updates as may be needed to address issues either directly or indirectly impacted by the clarifications noted herein.

Novitex Response: See revised RFP Price sheet dated March 22, 2016.

VCU acknowledges and accepts Novitex response.

7. Reference Offeror Proposal Section C.v and D.v – The University requests clarification that departments subscribing to the Alternate Delivery Program will be visited at a minimum of once a business day for pick-up and delivery of mail matter. Please describe and acknowledge the proposed service level of the Alternate Delivery Program.

Novitex Response: Novitex is currently delivering to and picking up mail from various departments on both the Monroe Park and Medical Campus. Novitex confirms that each department receiving services is getting at least one pickup/delivery per day. High volume departments and satellite locations are receiving a second sweep (including mail delivery and pickup) daily.

VCU acknowledges and accepts Novitex response.

8. Reference Offeror Proposal Section G.b – Offeror response places potential conditions to a “Shall” statement globally agreed to in Offeror proposal “....and as reasonably indicated by the VCU Contract Administrator.” Please acknowledge deletion of the entire Section G.b Offeror response statement.

Novitex Response: Novitex acknowledges deletion of the entire Section G.b. Offeror response statement. Novitex shall maintain software operating versions consistent with VCU version needs as indicated by the VCU Contract Administrator.

VCU acknowledges and accepts Novitex response.

9. Reference Offeror Proposal Section 3.a – Offeror response includes “presorting” under current services provided. As clarification, the Contractor will not be permitted to place any upcharge to any presort mail matter under this contract. Presort mail postage charge will include the cost for postage for the mail piece plus and any third party presort piece fee (State presort contract or other presort vendor contract upon advance written acceptance of the university). For example, current presort postage for a first class mail piece would amount to \$0.434 consisting of \$0.416 of postage and \$0.018 in presort fee from presort vendor. Please acknowledge.

Novitex Response: Novitex acknowledges the charges for presort mail will consist of only the postage amount and negotiated state presort contract piece fee.

VCU acknowledges and accepts Novitex response.

10. Reference Offeror Proposal Section 3.c – Offeror suggests utilization of either existing satellite office for a potential future CPU. Is Offeror open to implementing a CPU at any other locations on or off campus? Please advise.

Novitex Response: Novitex is open to exploring other locations and options for the CPU. Submitted proposal was based on current locations (Valentine House & VMI) and current staffing. Locations that are outside of the proposed (Valentine House & VMI), may result in increased costs (leased space, utilities, salaries, benefits, etc.)

VCU acknowledges and accepts Novitex response.

11. Please advise on how much was offered in terms of scholarship funds in Novitex spreadsheet final price offer sent on March 22, 2016?

Novitex Response: We offered \$2000.00

VCU acknowledges and accepts Novitex response.

12. VCU RFP Section XII – Special Terms and Conditions

In regards to RFP Section XII Special Terms and Conditions, VCU agrees to strike Request for Proposals (RFP) language Section XII.R – Indemnification and strike RFP language Section XII.V – Limitation of Liability and substitute revised language for both referenced sections as stated herein:

R. Indemnification: Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any third party claims, damages and actions of any kind or nature alleging bodily injury (including death) or loss of tangible personal property, to the extent caused by the negligent acts or misconduct of Novitex.

V. Limits of Liability:

- (a) *Direct Damages.* Novitex's total liability for each year under the Contract for any and all claims proven to have been caused by Novitex, at law or equity, will not exceed three (3) times the sums paid by VCU under the Contract during the previous twelve (12) month period; provided that, if the claim arises before the first twelve (12) month period of the contract has elapsed, Novitex's maximum liability shall not exceed the average monthly fees paid under the Contract year multiplied by thirty-six.
- (b) *Lost or Damaged Mail:* Novitex's liability for accountable mail (any mail requiring delivery confirmation of receipt) in the event of physical loss, damage, or delay in delivery, will be limited to those instances where a Novitex employee has signed for the mail and Novitex cannot provide any signed documentation transferring the accountability to Customer, or those instances in which Novitex handled such mail in a manner inconsistent with the requirements of this contract. Novitex's liability for all other mail, in the event of physical loss, damage, or delay in delivery, will be limited to those instances where such mail is proven by definitive documentation provided by the sender to be in Novitex's care, custody, and control, and which was handled by Novitex in a manner inconsistent with the requirements of this contract.
- (c) *Limits.* These limitations do not apply to (i) bodily injury, tangible property damage claims (ii) claims related to infringement by Novitex of the intellectual property rights of a third party, or (iii) claims that are proven to have been caused by Novitex's, a Novitex employee's, or a Novitex contractor's gross negligence, willful misconduct or fraud.
- (d) *Data.* Novitex will not be responsible for transmission errors, corruption of data, or for breaches in the security of transmission of data during transmission, unless proven to arise from the negligence of Novitex, a Novitex employee, or a Novitex contractor.

(e) *Indirect Damages.* Neither party will be liable for special, incidental, consequential or indirect damages, including without limitation lost profits, loss of data, or business opportunity, to the extent they are determined to be incidental, consequential or indirect damages.

Novitex acknowledges and accepts.

13. VCU RFP Section XII – Special Terms and Conditions – New Terms

In regards to RFP Section XII Special Terms and Conditions, VCU and Novitex agree to add Sovereign Immunity and Governing Law terms as indicated herein to any resulting contract:

RR. Sovereign Immunity:

VCU is an agency of the Commonwealth of Virginia and is afforded the protection of sovereign immunity under Virginia law. Any claims against VCU or the Commonwealth are subject to the requirements established under Virginia law for bringing such claims against VCU or the commonwealth, including the Virginia Tort Claims Act (Va. Code §§ 8.01-195.1 et seq.) and other applicable statutes relating to claims against the Commonwealth or its agencies. Notwithstanding any other provision, nothing in this contract shall be deemed to be or construed as a waiver of VCU's or the Commonwealth's sovereign immunity, or any other applicable requirements under Virginia law for bringing claims against VCU or the Commonwealth.

SS. Governing Law:

Governing law is Virginia law regardless of choice of law principles and venue is in a State court of competent jurisdiction in Richmond, VA.

14. Novitex's Proposal Response to RFP #6767280SW Mail Services Request for Proposal (RFP) dated January 29, 2016, Section 8. Contract Terms:

VCU Response: Section 8 shall be removed from the proposal response and from further consideration.

Novitex acknowledges and accepts VCU response.