

C. M. D2-23-16(6)(E)

"ITEM E"

A RESOLUTION

53-16

NO. 53-16

A RESOLUTION AUTHORIZING THE ANNUAL CONTACT WITH VIRTUCOM, INC., (NORCROSS GA) FOR THE PURCHASE OF COMPUTER EQUIPMENT AND ACCESSORIES, *ON AN AS NEEDED BASIS*. THE PURCHASE WILL BE ACCOMPLISHED VIA COOPERATIVE PURCHASE UTILIZING RFP NO. 13-015, ISSUED AND AWARDED BY THE MUSCOGEE COUNTY SCHOOL DISTRICT. THE CONTRACT TERM WILL BEGIN ON THE DATE OF CONTRACT EXECUTION THROUGH JUNE 30, 2019, WITH TWO OPTIONAL ONE YEAR EXTENSIONS. THE AMOUNT OF THE INTENDED PURCHASES SHALL NOT EXCEED THE AMOUNT BUDGETED FOR VARIOUS DEPARTMENTS FOR COMPUTER EQUIPMENT.

WHEREAS, the vendor will provide, install and maintain computer equipment and accessories, such as Lenovo computer hardware, mice, keyboards, etc. This equipment will be utilized by end users throughout the City as deemed necessary by the Information Technology Department; and,

WHEREAS, by using the Muscogee County School District RFP award, CCG will be able to benefit from MCSD's volume pricing which is more cost effective than the current state contract pricing, while also obtaining longer warranties and on-site services. This contract will allow CCG to continue to purchase Lenovo computers with the same or better specifications. It will also provide for the vendor to set-up and install the new systems, rather than drop shipping equipment to CCG and requiring IT staff to perform the installation. This will allow IT staff more time to respond to IT Central requests and focus on other tasks, such as the older machines that are not under warranty or service; and,

WHEREAS, Article 9-101, of the City's Procurement Ordinance, allows for participation in cooperative purchasing with other public procurement units.

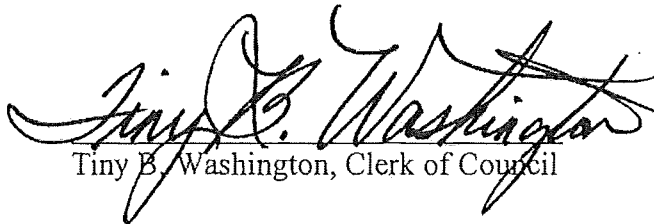
NOW, THEREFORE, THE COUNCIL OF COLUMBUS, GEORGIA, HEREBY RESOLVES AS FOLLOWS:

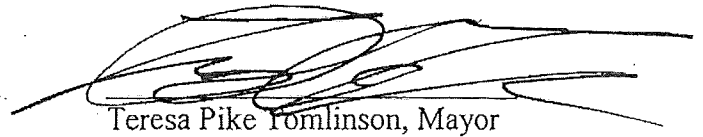
That the City Manager is hereby authorized to enter into contract with Virtucom, Inc., (Norcross GA) for the purchase of computer equipment and accessories, *on an as needed basis*. The purchase will be accomplished via Cooperative Purchase utilizing RFP No. 13-015, issued and awarded by the Muscogee County School District. The contract term will begin on the date of contract execution through June 30, 2019, with two optional one year extensions. Funding for the ongoing purchases and services will be budgeted, each fiscal year, in various departments' budgets for computer equipment.

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Introduced at a regular meeting of the Council of Columbus, Georgia, held the 23rd day of February, 2016 and adopted at said meeting by the affirmative vote of seven members of said Council.

Councilor Allen voting	<u>YES</u>
Councilor Baker voting	<u>YES</u>
Councilor Barnes voting	<u>ABSENT FOR VOTE</u>
Councilor Buck voting	<u>ABSENT FOR VOTE</u>
Councilor Davis voting	<u>ABSENT FOR VOTE</u>
Councilor Henderson voting	<u>YES</u>
Councilor Huff voting	<u>YES</u>
Councilor Thomas voting	<u>YES</u>
Councilor Turner Pugh voting	<u>YES</u>
Councilor Woodson voting	<u>YES</u>

  
Tiny B. Washington, Clerk of Council

  
Teresa Pike Fomlinson, Mayor

## End User Device Master Agreement

Agreement made this 25<sup>th</sup> day of FEBRUARY, 2016 (hereinafter referred to as the "Effective Date"), by and between the Columbus Consolidated Government (hereinafter referred to as "CCG"), and Virtucom, Inc., with offices at 5060 Avalon Ridge Parkway, Suite 300, Norcross, Georgia 30071, (hereinafter referred to as "Contractor").

### WITNESSETH

WHEREAS, Muscogee County School District ("MCSD") issued a Request for Proposal No. 13-015, soliciting proposals for the provisioning of End User Devices and installation and maintenance services for such equipment, as more particularly described therein ("RFP");

WHEREAS, Contractor submitted a proposal to MCSD in response to the RFP ("Proposal"); and

WHEREAS, Contractor's Proposal was deemed by MCSD to be the proposal most advantageous; and

WHEREAS, Article IX of the CCG Procurement Ordinance provides for cooperative purchasing among various local public procurement units of which MCSD is one; and

WHEREAS, Virtucom, Inc. is willing to make the same contractual terms available to CCG for the End User Devices procured pursuant to the RFP No. 13-015.

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

1. **Equipment.** The Contractor shall serve as a source of supply for the items of Equipment and Software identified in the RFP to the various Departments of CCG. As used herein, "Department" (Departments) or "Departments" (Depts.) shall include any and all CCG entities, including but not limited to departments, offices, and divisions. Contractor agrees to supply to each and every Departments all of such Department's total requirements for the Equipment. Departments shall place individual orders with Contractor by issuing a Purchase Order ("PO") referencing this Contract and detailing the items ordered. No shipment shall be authorized until such issuance of a PO. In some instances, where the Contractor has agreed, purchases may also be made by use of the Purchasing Card. Departments may purchase the Equipment under the following terms and conditions:

Purchase subject to the terms and conditions of this Master Agreement, Contractor agrees to sell to Departments the Equipment and Software identified on the attached Schedule A. Such schedule may be amended to include any additional Equipment added from time to time by written agreement of both parties.

2. **Service Requirements.** In addition to providing the purchased Equipment and Software, Contractor agrees to provide to Departments the installation, maintenance and support services (collectively and individually, the "Services") as detailed in Section 6 .and Addendum I of the RFP, and the contractor proposal.
3. **Order of Precedence.**

The contractual relationship between Contractor and CCG shall be governed by the following order of precedence: (i) the Master Agreement ;(ii) RFP 13-015; (iii) Proposal Response; (iv) any other Agreements.

4. **Term:** The initial "Term" shall begin on the date of execution of this agreement and end on June 30, 2019, with two optional one year extensions;

WHEREAS, the initial term of this agreement is for more than three and as such is by Georgia law a multi-year contract, and

WHEREAS, O.C.G.A. §20-2-506 mandates certain statutory requirements be met in order for MCSD to enter into a multi-year contract such contractual terms are specifically extended to CCG pursuant to its participation in this agreement.

- a. Therefore, pursuant to these requirements this contract, with respect to CCG, shall terminate absolutely and without further obligation on the part of CCG at the close of the calendar year in which it was executed, that being 2016, and at the close of each succeeding calendar year for which it may be renewed, the Parties agree that the initial term of this contract and any renewals shall terminate at the end of each calendar year and shall be automatically renewed on the 1st of January of the following calendar year unless CCG notifies VIRTUCOM no less than 30 days before the end of the calendar year that it will not renew the Contract for the following year because of budget cuts to the CCG budget for the fiscal year.
  - b. . The amount to be incurred in the calendar year of execution and in each year of the Initial Term and each subsequent year if the agreement is extended, cannot be definitively determined as many factors will dictate the specific needs and/or funding availability for each year. The need of, and/or funding for, equipment and services may be greater or lesser in a given year and as such cannot be quantified. Furthermore, CCG is not required to purchase any minimum amount of equipment and/or services in any given year or purchase any minimum amount for the duration of the agreement. CCG's expenditure shall depend on the needs of, and/or funding available to, CCG; and Contractor acknowledges and agrees that CCG is not required to expend any minimum amount for any given year, nor expend any minimum amount for the entire Agreement period. CCG may, at its sole option, renew as to all of the Equipment and Services to be provided hereunder or as to only the selected Equipment and Services. The terms and condition of this Agreement shall apply during any renewals of the Term.
5. Payment and Acceptance. Departments will pay Contractor for all undisputed amounts within thirty (30) days of receipt of invoice, provided that the Equipment and Services have been accepted by the Departments as hereinafter provided. Contractor shall deliver the Equipment and/or perform any Services in accordance with the time specified in the agreed upon Statement of Work and the PO issued by the Departments. Unless otherwise agreed to by Contractor and the Departments, Contractor shall provide written notification of completion of the delivery, or other performance of Services, to the Departments ("Delivery Notice"). The Departments shall have thirty (30) days from the date of receipt of the Delivery Notice to provide Contractor with written notification of acceptance or rejection due to unsatisfactory performance. Acceptance by the Departments may only be accomplished by an affirmative act on the part of the Departments and the failure of the Departments to issue an acceptance notice shall not be deemed an acceptance of the Equipment or Services or any portion thereof. In the event the Departments issue a rejection notice, Contractor shall, as quickly as is practical, correct at its expense all deficiencies caused by Contractor. The Departments shall not unreasonably withhold or delay such acceptance or rejection.
6. Warranty. Contractor warrants that in providing the Equipment, Software, and performing the Services:
- a. Contractor shall assign to the CCG acting by and through its IT Department or such Office or Department of CCG as the IT Department shall direct, the manufacturers' warranties for Equipment furnished to such Departments;
  - b. Any Equipment will conform to generally applicable standards in the industry, will be new and free from any and all defects in material, packaging and workmanship, and will meet all specifications set forth in the RFP and this Agreement and any documents referenced herein. Contractor and the manufacturers will, without charge to the CCG, correct any warranty related defects and make any additions, modifications or adjustments to any of the Equipment as may be necessary to keep the Equipment in operating order in accordance with specifications at all times during the applicable warranty period. Contractor will be responsible for coordinating problem resolution with the manufacturers without incurring additional charges;
  - c. Contractor will strictly comply with the descriptions and representations as to the Services (including performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards,

functions and requirements) which appear herein and Contractor and any employees or subcontractors of Contractor will perform the Services on time;

- d. In addition to any express and implied warranties provided to CCG under law or given under other provisions of this Agreement, Contractor hereby expressly warrants that the Services to be performed hereunder will be performed in a workmanlike manner, subject to the supervision and instructions provided by the IT Department, and that all work assigned will be performed in a manner consistent with that level of care and skill ordinarily exercised by other providers of similar services under similar circumstances at the time Services are provided;
- e. The Equipment and Services will not be in violation of any applicable law, rule or regulation, and Contractor will obtain all permits and licenses required to comply with such laws and regulations;
- f. The Equipment and Services will not violate or in any way infringe upon the rights of third parties, including proprietary information and non-disclosure rights, or any Intellectual Property rights. As used herein, "Intellectual Property" shall mean any and all know-how, inventions, patents, copyrights, models, designs, trademarks, trade dress, trade secrets, test results, knowledge, techniques, discoveries, regulatory filings, or other information (whether or not patentable and whether or not in tangible or intangible form), and any other industrial or proprietary rights, and any documentation relating thereto, and any and all applications for any of the foregoing, whether or not registered as of the Effective Date or at any later date;
- g. Contractor is the lawful owner or licensee of all software, hardware, methods, methodologies and any pre-existing Intellectual Property in the Equipment or used in the performance of the Services contemplated hereunder and the Contractor has the right to permit the Departments access to or use of such software, hardware, methods, methodologies and Intellectual Property;
- h. Contractor will screen all employees supplied to the Departments to ensure that each employee is fully qualified to perform the Services, and if required by law or ordinance, is validly licensed and/or has obtained all requisite permits to perform such Services for the Departments;

7. License and Intellectual Property Rights.

For purposes of clarity, with respect to the Services set forth in the SOW and performed by a third party on behalf of Virtucom, Virtucom's delegation of those Services to a third party shall not relieve Virtucom of its obligations to fully perform the Services under this Agreement.

8. Shipping, Delivery and Return. Contractor shall pay for packing, crating, and shipping of the Equipment to and from a Department's location. Shipment Delivery shall be FOB: Destination.

9. Indemnification.

- a. Contractor hereby waives, releases, relinquishes, discharges and agrees to indemnify, protect and save harmless the Columbus Consolidated Government, its Departments, and their officers and employees (hereinafter collectively referred to as "Indemnities"), of and from any and all claims, demands, liabilities, losses, costs or expenses, including attorneys' fees, for any loss or damage for bodily injury, property damage and attorney's fees related thereto caused by, growing out of, or otherwise happening in connection with this Agreement, due to any act or omission on the part of Contractor, its agents, employees, subcontractors, or others working at the direction or on behalf of Contractor. This indemnification applies notwithstanding the fact that third parties or any of the Indemnities may be partially responsible for the events giving rise to the claim; or the claim results in a monetary obligation that exceeds any contractual commitment. However, if any of the Indemnities or third parties are partially responsible for the events giving rise to the claim, Contractor's indemnification hereunder shall apply only to the extent that Contractor contributed to the events. This indemnification does not apply to the extent of the willful or intentional misconduct or sole negligence of the Indemnities.

- b. Contractor shall at its expense defend the Indemnities of any claim, suit or other demand asserted against the Indemnities by any third party alleging that any Equipment or Services as provided by Contractor infringes a third party's Intellectual Property rights and shall indemnify the Indemnities in the amount of any final judgment or settlement of such claim, suit or other demand. Contractor shall be under no obligation to defend or indemnify the Indemnities as set forth in this Section to the extent that such third party claim, suit, or other demand arises out of or relates to: (i) Contractor's compliance with Department's specifications; (ii) a combination of the Equipment and/or Services with products or services not provided by Contractor; (iii) a modification of the Equipment or Services that is inconsistent with the terms of this Agreement or the RFP; or (iv) information, data, or other content not provided by Contractor. With respect to any pending or threatened claim, suit or other demand as to which Contractor is the indemnifying party, Contractor shall obtain for Departments the right to continue using the Equipment and/or Services or alternatively replace or modify the Equipment and Services so that they are functionally equivalent but non-infringing.
- c. If and to the extent such damage or loss as covered by this Indemnification provision is covered by the State of Georgia Tort Claims Fund (the "Fund"), Contractor agrees to reimburse the Fund to the full extent permitted by the Constitutions and the laws of the State of Georgia and the terms of the Fund, Contractor and its insured's waive any right of subrogation against the Columbus Consolidated Government, the Indemnified Parties and the Fund and insurers participating there under, to the full extent of this indemnification.
- d. Contractor shall, at its expense, be entitled to and shall have the duty to participate in the defense of any suit against the Indemnities. No settlement or compromise of any claim, loss or damage entered into by Indemnities shall be binding upon Contractor unless approved in writing by Contractor. No settlement or compromise of any claim, loss or damage entered into by Contractor shall be binding upon Indemnities unless approved in writing by Indemnities.
- e. Contractor's obligation to indemnify any Indemnities will survive the expiration or termination of this Agreement by either party for any reason.

#### 10. Personnel

- a. Contractor warrants that all persons assigned by it to the performance of this Agreement shall be employees or authorized subcontractors of Contractor and shall be fully qualified to work under this Agreement. Contractor shall ensure that an adequate number of appropriately qualified personnel are employed and available to provide the Services in accordance with RFP and this Agreement.
- b. All of Contractor's or a subcontractor's personnel shall comply with the Department's reasonable confidentiality and security requirements while on Department's premises. In the event that any of Contractor's or a subcontractor's personnel do not comply with such confidentiality and security requirements, the Departments, in its sole reasonable discretion, may have the personnel removed from the premises.
- c. Personnel commitments made in Contractor's proposal (if any) shall not be changed unless approved by the IT Department. If the IT Department believes that the performance or conduct of any person employed or retained by Contractor to perform any Services hereunder is unsatisfactory for any reason or is not in compliance with the provisions of this Agreement, the IT Department shall so notify Contractor in writing and Contractor shall promptly address the performance or conduct of such person, or, at the Department's request, immediately replace such person with another person acceptable to the Departments and with sufficient knowledge and expertise to perform the Services in accordance with this Agreement.

#### 11. Termination.

- a. Each party has the right to terminate this Agreement if the other party breaches or is in default of any material obligation hereunder which default is incapable of cure, or which, being capable of cure, has not been cured within thirty (30) days after receipt of notice of such default (or such additional cure period as the non-defaulting party may authorize).

- b. CCG may terminate this Agreement, in whole or in part, by written notice to Contractor and may regard Contractor in default of this Agreement if Contractor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise.
  - c. CCG may terminate this Agreement, in whole or in part, immediately, without notice, if: (i) CCG deems that such termination is necessary to prevent or protect against fraud or otherwise protect any Departments personnel, facilities or services, or (ii) Contractor is debarred or suspended from performing services on any public contracts.
  - d. CCG may terminate this Agreement upon the termination of the existing agreement between MCSD and Contractor which was entered into as a result of RFP Number 13-015 by written notice to Contractor specifying the termination date.
  - e. Upon the termination or expiration of this Agreement, Contractor promptly shall return to the Departments all papers, materials and other Department's property then in its possession, including but not limited to all work in progress as is appropriate in its then-existing form (in object code and source code to the extent such work is comprised of software, and in machine readable and printed formats to the extent such work is comprised of documentation) to such Departments.
12. Funding. Notwithstanding any other provision contained herein to the contrary the parties acknowledge that institutions of the Columbus Consolidated Government are prohibited from pledging the credit of the CCG. If the source of payment for the charges payable hereunder no longer exist or are determined to be insufficient, this Agreement shall terminate without further obligation of the Departments as of that moment. The determination of the Departments as to the occurrence of the events stated herein shall be conclusive.

The CCG may, during the contract period, terminate or discontinue the purchase of goods, services, or systems covered in this RFP at the end of the CCG's then current fiscal year and upon thirty (30) days prior written notice to the contracted Vendor. This written notification will thereafter release the CCG of all further obligations in any way related to such goods, services or systems covered herein.

Such prior written notice will state the following:

1. The CCG's Chief Budget Officer declares that the lack of appropriated funds is the reason for termination,

This written notification hereafter releases the CCG of all further obligations in any way related to such goods, services or systems covered herein.

13. Taxes. All fees payable to Contractor hereunder shall be net of any and all taxes that the Contractor may be required by law to collect in connection with the provision of the Services hereunder. Contractor shall be solely responsible for the payment of any and all taxes lawfully imposed upon it, including but not limited to taxes on property owned, leased or used by Contractor; franchise or privilege taxes on Contractor's business; gross receipts taxes to which Contractor is subject; and income taxes. By this paragraph, CCG makes no representation whatsoever as to the liability or exemption from liability of Contractor to any tax imposed by any governmental entity. Upon request, CCG will provide a certificate of tax exemptions which apply to this Agreement.
14. Disclaimer of Certain Damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF USE OR LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL, ARISING IN CONNECTION WITH THIS AGREEMENT, UNDER ANY THEORY OF TORT, CONTRACT, INDEMNITY, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. THE PROVISIONS OF THIS

PARAGRAPH SHALL NOT APPLY TO CONSTRUCTOR'S OBLIGATIONS TO INDEMNIFY ANY INDEMNITEE.

15. Assignment. Contractor shall not assign or subcontract the whole or any part of this Agreement without CCG's prior written consent.
16. Cooperation and Transition of Services.
  - a. In the event that any of the Departments has entered into or enters into agreements with other contractors or government institutions for additional work related to the Services provided hereunder, Contractor agrees to cooperate fully with such other parties.
  - b. Upon expiration or earlier termination of this Agreement or any Services provided hereunder, Contractor shall accomplish a complete transition of the Services from Contractor to the Departments, or to any replacement provider designated by such Departments, without any interruption of or adverse impact on the Services or any other services provided by third parties. Contractor shall cooperate fully with such Departments or such replacement provider and promptly take all steps required to assist in effecting a complete transition. All services related to such transition shall be performed at no additional cost beyond what would be paid for the Services hereunder.
  - c. Provider shall not commit any act which will interfere with the work performed by any third party as set forth herein.
17. Record Retention and Audit Rights. Contractor shall, and shall cause each of its subcontractors to, maintain accurate books, records, documents and other evidence concerning Contractor's financial status, costs, expenses, provision of Equipment and performance of Services under this Agreement (collectively, "Records") for the latter of: (a) five (5) years after the final payment under this Agreement, (b) for such period (if any) as is required by applicable statute, or (c) for such period (if any) as is set forth in the RFP. Contractor's accounting procedures and practices shall conform to generally accepted accounting principles ("GAAP") and the costs properly applicable to this Agreement shall be readily ascertainable therefrom. The Departments, on its own or by and through the State Auditor, shall have the right, exercisable at any reasonable time during normal business hours, to inspect and audit any Records. Upon request, Contractor shall deliver the required documentation and records on the date and at the location specified by the IT Department or the CCG Internal Auditor or any external auditing firm designated by CCG or other duly authorized officer of the CCG.
18. Insurance.
  - a. The awarded contractor shall furnish to the CCG a Certificate of Insurance showing compliance with the limitations listed herein. The Certificate of Insurance must be sent to the CCG prior to commencement of work. All Auto, General Liability and Umbrella policies shall list CCG as an Additional insured. No insurance will be acceptable unless written by a company licensed by the State Insurance Department to do business in Muscogee County, Georgia and have a Best Guide financial Rating of A or better.
  - b. The vendor, and any of the vendor's sub-contractors, agrees to comply with the provisions of worker's compensation laws of the State of Georgia. A certificate from an insurance company showing issuance of worker's compensation coverage for the State of Georgia or a certificate from Georgia Worker's Compensation Board showing proof of ability to compensate directly shall be submitted to the CCG prior to beginning the work.
  - c. It shall be stated on every policy or certificate of insurance, as the case may be, that "The insurance company agrees that Policy Number (insert the number) shall not be canceled until thirty (30) days after the Columbus Consolidated Government has received written notice."
  - d. The vendor further shall maintain such other insurance (with limits as shown below) that shall protect the vendor and CCG from any insured claims for property damage or personal injury, including death, which may



## End User Devices Master Agreement

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arise out of operations under this contract, and the vendor shall furnish the CCG certificates of such insurance as shown below.

e. Below is listed the insurance coverage which must be procured by the vendor at his own expense. The vendor agrees to follow instructions indicated in each case:

- i. Comprehensive General Liability Insurance. Personal injury, including death, with limits of \$1,000,000 for each person and \$2,000,000 for each occurrence.
- ii. Professional Liability Insurance. Personal injury, including death, with limits of \$1,000,000 for each person and \$2,000,000 for each occurrence.
- iii. Property Damage -limits of \$100,000 for each occurrence and \$300,000 for the aggregate.
- iv. Auto Liability -including Owner, hired, and non-owned vehicles with limits of Bodily injury, including death limits of \$1,000,000 for each person and \$1,000,000 for each occurrence, and Property damage limits of \$1,000,000 for each occurrence.
- v. Umbrella Excess Liability Insurance; Contractor shall carry umbrella excess liability including Auto, General Liability and Professional Liability in the amount of \$1,000,000 over existing primary insurance and over self-insured hazards.
- vi. Environment Impairment Liability and/or Pollution Liability - \$1,000,000 per occurrence'

19. Independent Contractor. In its relationship with CCG for purposes of performing any services assigned under this Agreement, Contractor warrants that it is an independent contractor. Contractor shall therefore be responsible for compliance with all laws, rules and regulations involving its employees and any subcontractor(s), including but not limited to employment of labor, hours of labor, health and safety, working conditions, workers' compensation insurance, and payment of wages. Contractor warrants that all persons assigned to perform services under this Agreement are employees of Contractor or employees of a subcontractor approved by CCG as specified in this Agreement. Neither Contractor nor any of its agents, servants, employees, subcontractors or suppliers shall become or be deemed to become agents, servants, or employees of CCG. This Agreement shall not be construed so as to create a partnership or joint venture between Contractor and the CCG or any of its Department(s).
20. Waiver and Severability. The waiver by either party of any breach of any provision contained in this Agreement shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision contained in this Agreement. Any such waiver must be in writing in order to be effective, and no such waiver or waivers shall serve to establish a course of performance between the parties contradictory to the terms hereof. All provisions of this Agreement are severable, and the unenforceability or invalidity of any of the provisions will not affect the validity or enforceability of the remaining provisions. The remaining provisions will be construed in such a manner as to carry out the full intention of the parties. Section titles or references used in this Agreement have no substantive meaning or content and are not a part of this Agreement.
21. Applicable Law and Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Georgia, U S.A., without regard to its conflict of laws principles. Any lawsuit or other action based on a claim arising from this Agreement shall be brought in a court or other forum of competent jurisdiction within Muscogee County, Georgia.
22. Notices. All notices, requests, or other communications (excluding invoices) hereunder shall be in writing and either transmitted via overnight courier, electronic mail, hand delivery or certified or registered mail, postage prepaid and return receipt requested to the parties at the following addresses. Notices will be deemed to have been given when received.

To Columbus Consolidated Government	To Contractor
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## End User Devices Master Agreement

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Attn: Dr. Forrest Toelle, Information Technology Director	Attn: Jenny Tang
100 10 <sup>th</sup> Street	5060 Avalon Ridge Parkway, Suite 300
Columbus, Georgia 31901	Norcross, GA 30071
Phone: 706-653-4000	Phone: 770-908-8100 Fax: 770-908-8007

### 23. Drug Free Work Place.

- a. If Contractor is an individual, he or she hereby certifies that he or she will not engage in the unlawful sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Agreement.
- b. If Contractor is an entity other than an individual, it hereby certifies that:
  - i. A drug free work place will be provided for the Contractor's employees during the Term of this Agreement; and
  - ii. It will secure from any subcontractor hired to work in a drug free work place the following written certification: "As part of the subcontracting agreement with (Contractor's Name), (Subcontractor's Name), certifies to Contractor that a drug free work place will be provided for subcontractor's employees during the performance of this Agreement pursuant to paragraph 7 of subsection B of O. C.G.A. § 50-24-3."
- c. Contractor may be suspended, terminated, or debarred if it is determined that:
  - i. Contractor has made false certification hereinabove.
  - ii. Contractor has violated such certification by failure to carry out the requirements of O.C.G.A § 50-24-3.

### 24. Compliance with Laws and CCG Policies.

- a. Contractor shall perform its obligations hereunder in accordance with all applicable federal, state and local laws, rules and regulations. Contractor also shall comply, and shall require its employees to comply, with all applicable CCG's policies and standards in effect during the performance of this Agreement, including but not limited to CCG's policies and standards relating to personnel conduct, security, safety, confidentiality and ethics.
- b. Certain equipment, software and technical data which may be provided hereunder may be subject to export and re-export controls under the US. Export Administration Regulations and/or similar regulations of the US. or any other country. Contractor shall be responsible for complying with all export and re-export laws and regulations including without limitation, (i) local license or permit requirements, (ii) export, import and customs laws and regulations (such as the export and re-export controls under US Export Administration Regulations and/or similar regulations of the US or any other country) which may apply to certain equipment, software and technical data provided hereunder, and (iii) all applicable foreign corrupt practices acts. CCG represents and warrants to Contractor that it, its Departments, employees and agents shall not provide Contractor with or otherwise use in connection with the Services any document, technology, software or item for which any authorization or license is required under any Export Law.
- c. Contractor shall obtain and maintain, and shall cause its subcontractors to obtain and maintain all approvals, permissions, permits, licenses, and other forms of documentation required in order to comply with all applicable foreign or domestic laws, rules or regulations.
- d. Contractor agrees that any failure by Contractor or Contractor's employees to comply with any of the obligations of this Section may be treated by CCG as a material breach of this Agreement by Contractor.

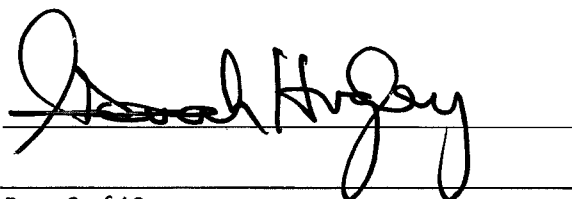
25. Subcontractors. Any subcontractors must be approved in advance by CCG, which approval may be withheld in CCG's sole discretion.
26. Publicity. Contractor shall not release without CCG's prior written approval any publicity regarding the program or Services provided herein, including but not limited to, notices, information, pamphlets, press releases, research, reports, signs and similar public notices prepared by or for the Contractor, identifying the Department receiving goods or services under this Agreement; however, Contractor may reference this Agreement in proposals for other contracts without Department's approval.
27. Non-exclusivity. This Agreement is entered into solely for the convenience of the CCG, and in no way precludes CCG, or any Departments from obtaining like goods from other suppliers upon prior approval of the CCG. Such approval shall be made at the sole discretion of the CCG, and shall be conclusive. Such approval shall only be granted when it is deemed to be in the best interest of the CCG to do so.
28. Title and Risk of Loss.
- a. Title to Purchased Equipment. Title to any purchased Equipment shall remain with the Contractor until it is accepted by CCG in accordance with Section 5 above.
  - b. Risk of Loss. All risk of loss or damage to the Equipment, including risk of transit, shall remain with the Contractor until it is accepted by the Departments in accordance with Section 5 above. Insurance during shipment and until the Equipment is accepted by Departments is the responsibility of the Contractor.
29. Time is of the Essence. Time is of the essence with regard to performance of any Services under this Agreement, unless the parties agree otherwise in writing.
30. Entire Agreement. This Agreement, including all Exhibits and documents incorporated hereunder, constitutes the entire agreement between the parties with respect to the subject matter and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. No amendment to this Agreement shall be valid unless made in a writing of equal dignity and signed by both parties. No representation, request, instruction, directive or order, made or given by any official of the Department or of any Department of the CCG, whether verbal or written, shall be effective to amend this Agreement or excuse or modify performance hereunder unless reduced to a formal amendment and executed as set forth above. Contractor shall not be entitled to rely on any such representation, request, instruction, directive or order and shall not, under any circumstances whatsoever, be entitled to additional compensation, delay in performance, or other benefit claimed for relying upon or responding to any such representation, request, instruction, directive or order.

This Agreement and any Addendum hereto, along with RFP #13-015 and the Response submitted by VIRTUCOM (VIRTUCOM) to RFP #13-015, and any documents, schedules, and addenda or amendments included with RFP #13-015 and VIRTUCOM'S Response thereto, are the complete and exclusive statement of agreement between the parties and the parties agree to be bound by this Agreement, and any Addendum hereto. They supersede all prior agreements and understandings, both oral and written, with respect to the subject matter hereof.

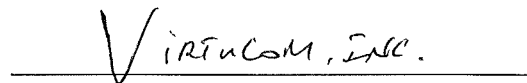
IN WITNESS WHEREOF the parties have executed this Agreement on the date first written above.

Columbus Consolidated Government

Virtucom, Inc.



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End User Devices Master Agreement

Name

Signature

Title

Date

*David Hughey*  
*City Manager*  
*3/3/16*

Name

Signature

Title

Date

*Jenny T. Tang*  
*[Signature]*  
*02/25/2016*