

**STATE OF NORTH CAROLINA  
COUNTY OF DURHAM**

**SERVICE CONTRACT  
Acumen I.T., LLC**

This is a Contract made by **City of Durham** (hereafter "City") and Acumen I.T., LLC (hereafter "Contractor") whose principal office and place of business is Greenville, South Carolina. The date of this Contract is \_\_\_\_\_, 2011.

**Data Backup and Recovery Solutions**

This is a Contract to provide data backup and recovery required by City from \_\_\_\_\_, 2011 to \_\_\_\_\_, 2012 ("Initial Period"), unless that period is changed as provided in this Contract. The Contractor will be paid \$1,164,556.

The City and the Contractor agree as follows:

Sec. 1. Background and Purpose. The purpose of this Contract is to have the Contractor provide a comprehensive data backup and recovery solution to address the City of Durham's growing needs with an emphasis on effective data management that meets and adheres to industry best practices.

Sec. 2. Services and Scope to be Performed. Presumption that Duty is Contractor's. The Contractor will collect current City data via an onsite or offsite discovery process. This includes CommVault's examination of the City's existing server and network infrastructure, applications, data distribution, and requirements for data retention. The documents which are attached to this contract are incorporated herein by reference and made a part of this Contract. These documents are the Exhibit A entitled, "Hitachi Data Protection Suite v9, Professional Services Overview, Full Implementation;" Exhibit B entitled, "Hitachi Data Protection Suite v9, Capacity License Agreement Overview, (Enterprise Infrastructure);" Exhibit C entitled, "City of Durham Insurance Requirements;" Exhibit D entitled, "Maintenance Support Hardware and Software;" Exhibit E entitled, "Acumen I.T., LLC, Price Quote;" Exhibit F entitled, "The City of Durham Hitachi Data Protection Suite 9 – Hardware Specifications;" and Exhibit G entitled, "CommVault Systems, Inc. End User License and Limited Warranty Agreement."

In case of conflict between an attachment and the text of this contract excluding the attachment, the text of this Contract shall control.

In this Contract, "Task" means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor's duties to the City that arise out of this contract. Unless the context requires otherwise, if this contract states that a Task is to be performed or that a duty is owed, it shall be presumed that the Task or duty is the obligation of the Contractor.

Sec. 3. Complete Task without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Tasks.

Sec. 4. Compensation and Acceptance. (a) Compensation. The City shall pay the Contractor for the Work as follows: Phase I – Architecture & Discovery (7 days), Site preparation design document delivered no less than 20 days prior to delivery of hardware. 3 days onsite discovery and implementation planning, 2 days offsite – completion/review architecture and discovery documentation, Servers delivered. 1-2 days onsite-Storage delivered and installed. The equipment is considered installed when equipment is racked, cabled and powered up to confirm it is in good working order. Prior to Phase 1, a 5 day training course will be offered. Training Vouchers delivered.

The City agrees to provide the necessary physical and environmental requirements at the installation sites and be ready for hardware installation to begin within 5 days of delivery. The City will rack, cable and power up servers to confirm that the equipment is in good working order. Should the City find it necessary to delay or postpone hardware installation after advising Acumen I.T., LLC to ship the equipment, City agrees to pay Acumen I.T., LLC for that hardware in accordance with agreed upon terms. Customer Acceptance Phase I – payment for hardware due upon receipt \$368,825.

Phase II – HDPS Software/Backup Deployment (10 days) 5 days onsite – software installation, 5 days onsite – backup working as configured. Customer Acceptance Phase II payment due. \$604,751.

Phase III – Archiver/Content Indexer (5 days). 5 days onsite – archive and content indexer working as configured. Customer Acceptance Phase III.

Phase IV – Reporting/Replication (5 days). 5 days onsite – reporting and replication working as configured. Documentation of the City's Backup and Recovery Solution provided to the City. Customer Acceptance Phase IV payment for services due upon completion, \$190,980.

The City shall not be obligated to pay the Contractor any payments, fees, expenses or compensation other than those authorized by this section. The total of payments for Phases shall not exceed the amount in Exhibit E entitled, "Acumen I.T., LLC, Price Quote."

(b) Acceptance. Contractor shall be deemed to have tendered a completed of the project outlined in this Contract on the date (the "Delivery Date") that Contractor's Project Manager provides written notice, which may be via e-mail for purposes of this Section 4 (b), to the City's Project Manager that the applicable phase(including the completion of the project) is complete. The City shall have the right to examine and test any deliverable provided in connection with the completion of a milestone for a period of fifteen (15) days after the Delivery Date (the "Testing Period") to determine whether it conforms in all material respects to the applicable specifications. During the Testing Period, the City may give Contractor written notice, describing with particularity, any material errors, defects or non-conformities that it discovers. Upon receipt of such notice, Contractor shall correct the same in such time and manner as is reasonable under the circumstances. Thereafter, delivery and testing shall proceed as set forth in the immediately preceding sentences for as many times as necessary to achieve final acceptance by the City, with the exception that the Testing Period shall be limited to 15 days for each subsequent cycle of testing. Completion and acceptance of Phases of the project shall be deemed to occur if the City gives Contractor written notice of its acceptance, or if the City fails to give written notice of any errors, defects or non-conformities before the end of the applicable Testing Period.

Sec. 5. Contractor's Billings to City. Compensation. (a) The Contractor shall send invoices to the City in the amounts to be paid pursuant to this Contract. Each invoice shall document, to the reasonable satisfaction of the City such information as may be reasonably requested by the City. Invoices shall include the description of tasks performed and the deliverables associated with completed tasks, software and storage and server hardware purchases, five year maintenance and the deliverables associated with completed tasks. All travel invoices must be preapproved by the City. Within 30 days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

(b) The Contractor must submit travel receipts for air carrier (Coach Airfare), shuttle service and lodging. The Contractor's meals will be reimbursed on a per diem rate for the Raleigh-Durham area.

(c) Expenses eligible for reimbursement on a per diem rate for meals and incidentals or actual cost basis may include transportation, lodging, and other reasonable business expenses. The City is committed to minimizing travel costs while providing a reasonable balance between the needs of the City and traveler.

(d) **Hotel/Motel:** The actual cost of hotel/motel will be reimbursed when supported by a paid receipt itemizing daily charges. Only the single room rate will be reimbursed. It is the responsibility of the traveler to document that the single room rate and double room rates are the same.

(e) **Meals and Incidental Expenses:** Travelers may request to be reimbursed for meals and incidental expenses (M&IE) for overnight travel at the Internal Revenue Service's prescribed per diem rate based upon the city/county where the lodging is located. If not listed as a key city, the current standard rate will be used. Within thirty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

The City shall pay the Contractor for the Work as follows: The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized in Exhibit E, Acumen I.T., LLC, Price Quote.

Sec. 6. Prompt Payment to Subcontractors. (a) Within 15 days of receipt by the Contractor of each payment from the City under this Contract, the Contractor shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 15 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the 16<sup>th</sup> day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due.

By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against Acumen I.T., LLC, but not against the City of Durham.

(b) If the individual assigned to administer this contract for the City (in this section, titled "Prompt Payment to Subcontractors," he or she will be referred to as the "Project Manager") determines that it is appropriate to enforce subsection (a) in this manner, the City may withhold from progress or final payments to Acumen I.T., LLC, the sums estimated by the Project Manager to be

(i) the amount of interest due to the Subcontractor under subsection (a), and/or

(ii) the amounts past-due under subsection (a) to the Subcontractor but not exceeding 5% of the payment(s) due from the City to Acumen I.T., LLC.

This subsection (b) does not limit any other rights to withhold payments that the City may have.

(c) Nothing in this section (titled “Prompt Payment to Subcontractors”) shall prevent Acumen I.T., LLC at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to Acumen I.T., LLC or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

(d) The Project Manager may require, as a prerequisite to making progress or final payments, that Acumen I.T., LLC provide statements from any Subcontractors designated by the Project Manager regarding the status of their accounts with Acumen I.T., LLC. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

Sec. 7. Insurance. See Exhibit C entitled, “City of Durham Insurance Requirements.”

Sec. 8. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule referred to in Section 2 above or any applicable attachment above, the City will provide to Contractor written notice specifying the breach in detail. Contractor will have fifteen (15) days to cure the breach to the City’s reasonable expectations. If after 15 days after having received written notice of such breach, Contractor cannot reasonably cure the specified breach, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City’s rights and remedies. Before doing so, the City shall give the Contractor written notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 9. Exhibits. The following exhibits are made a part of this Contract: Exhibit A entitled, “Hitachi Data Protection Suite v9, Professional Services Overview, Full Implementation,” containing six pages, Exhibit B entitled, “Hitachi Data Protection Suite v9, Capacity License Agreement Overview, (Enterprise Infrastructure),” containing three pages, Exhibit C entitled, “City of Durham Insurance Requirements,” containing one page, Exhibit D entitled, “Maintenance and Support Hardware and Software,” containing one page, and Exhibit E entitled, “Acumen I.T., LLC Price Quote,” containing one page, Exhibit F entitled, “The City of Durham Hitachi Data Protection Suite 9 – Hardware Specifications,” containing two pages, and Exhibit G entitled, “CommVault Systems, Inc. End User License and Limited Warranty Agreement,” containing five pages.

Sec. 10. Notice. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City:

City of Durham  
CIO/Director, Technology Solutions Department  
101 City Hall Plaza  
Durham, NC 27701  
The fax number is (919) 560-4808

To the Contractor:

Acumen I.T., LLC  
G.T. “Toby” Stansell  
3620 Pelham Road PMB9  
Greenville, SC 29615-5044  
The fax number is (864) 334-1941

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this Contract shall be deemed given and sent at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 11. Indemnification. (a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in

connection with, or out of this Contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. (e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 12. Miscellaneous

(a) Choice of Law and Forum; Service of Process. (i) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. "Agent for Service of Process" means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment. Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the work, the Contractor shall comply with all applicable law.

(g) Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS

## SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(i) SDBE. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

(j) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(k) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) "Duties" includes obligations. (5) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word "shall" is mandatory. (7) The word "day" means calendar day. (8) The word "Work" is defined in Section 2. (9) A definition in this contract will not apply to the extent the context requires otherwise.

(l) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(m) City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

Sec. 13. Termination for Convenience ("TFC"). (a) *Procedure.* Without limiting any party's right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor a 90 days written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) *Obligations.* Upon TFC, all obligations that

are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City's instructions as to which subcontracts to terminate. (c) *Payment*. The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City's decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

ATTEST:

CITY OF DURHAM

\_\_\_\_\_

\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Corporate Secretary

\_\_\_\_\_  
Acumen I.T., LLC

(Affix corporate seal)

By \_\_\_\_\_  
President

**PREAUDIT CERTIFICATE**

\_\_\_\_\_

State of \_\_\_\_\_  
County of \_\_\_\_\_

**ACKNOWLEDGMENT BY CORPORATION**

I, a notary public in and for the aforesaid county and state, certify that \_\_\_\_\_ personally appeared before me this day and stated that he or she is \_\_\_\_\_ Secretary of Acumen I.T., LLC, a corporation, and that by authority duly given and as the act of the corporation, the foregoing contract with the City of Durham was signed in its name by its \_\_\_\_\_ President, whose name is \_\_\_\_\_, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My commission expires: \_\_\_\_\_

## Exhibit A

### Hitachi Data Protection Suite v9 Professional

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#### Services Overview

#### Full Implementation

**Hitachi Data Systems partners with CommVault to deliver comprehensive Professional Services to ensure successful implementation of the HDPS Solution. This document is intended to specify the tasks that will be performed by the CommVault onsite engineer during a 25-day Engagement.**

#### Assessment and Design

Current-state data will be collected via an onsite or offsite discovery process as previously confirmed with the City of Durham. This includes CommVault's examination of the City of Durham's existing server and network infrastructure, applications, data distribution, and requirements for data retention. CommVault will work with the City of Durham to identify any technical barriers that prevent components from being installed. CommVault and the City of Durham will work together to accomplish any of the following applicable tasks:

- **Current-State Assessment / Storage Architecture Review** –Servers, applications, data quantities, and storage media are identified. Business requirements relative to the project objectives and end-user service level agreements are discussed in order to create the proper data movement Policies.
- **Data Flow Analysis** – Data demands are calculated based on job window constraints, bandwidth availability, data volume, and maximum time-to-restore requirements. These demands are load-balanced based on recommendations from CommVault and in accordance with the City of Durham's directions, across storage policies and scheduled by each application and file system type. Specific recommendations are provided for hardware upgrades (server, network, tape library), if necessary to accommodate the final design requirements.
- **Enterprise Scheduling** – CommVault assists in developing a complete data movement schedule based on City of Durham needs and business and data retention requirements for each server. Recommendations for frequency of full backups, incremental backups, and auxiliary copy requirements for off -site/redundant protection are reviewed.
- **HDPS Singular Information Management® Architecture Diagram(s)** –The recommended, site-specific, HDPS application architecture will be provided by CommVault and will include the CommServe, Media Agents, storage libraries, and iDataAgents throughout the City of Durham enterprise.

#### CTE Deployment

##### *CommServe® and Media Agent Installation*

Complete installation of the HDPS® CommServe® binaries on the designated CommServe.

Complete initial configuration of HDPS Software on the CommServe.

Configure the CommServe database.

Register CommCell® ID.

Configure storage targets.

Install site-appropriate HDPS Service Packs, patches and configure CommServe for automatic updates.

Configure HDPS Media Agent(s).

Configure connectivity to storage targets.  
Define storage target(s) to the HDPS Media Agents.  
Test local backup and recovery.  
Backup and restore operations for CommServe DR backup.  
Backup and restore operations for test data through the HDPS Media Agent(s).

### **Data De-Duplication Configuration**

CommVault will install and configure De-Duplication as part of Implementation Services. These services cover the implementation and verification of the Single Instance Storage deployment in the environment. CommVault and the City of Durham will work together to accomplish the following tasks:

- Validation of the City of Durham's data storage configuration for De-Duplication at the database and magnetic library levels.
- Configure the De-Duplication database.
- Enable De-Duplication on the Storage Policy.
- Configure the De-Duplication Storage Policy.
- Verify the De-Duplication deployment.
- Configure and test SILO option if required by the Solution Design.

### **GridStor™**

CommVault will install and configure the GridStor<sup>a</sup> software as part of Implementation Services. The GridStor software is designed to provide comprehensive load balancing and failover among storage resources within the City of Durham environment. These services cover the implementation and verification of GridStor in the environment. CommVault and will work together to accomplish the following tasks:

- Define and Configure Shared IndexCache.
- Configure additional data paths within City of Durham-designated Storage Policies that require load balancing and failover.
- Configure load balancing and failover properties within City of Durham designated Storage Policies.
- Perform a test backup of a City of Durham-designated client through Storage Policy configured with GridStor
- Cause failure to show GridStor functionality with Storage Policy
- Perform restore to verify recoverability of client backed up through Storage Policy with GridStor enabled.

## **VaultTracker®**

CommVault will configure the VaultTracker® feature as part of Implementation Services. The VaultTracker® feature provides the capability to track media movement between two locations. VaultTracker® is also used to export media. These deployment services cover the implementation and verification of the VaultTracker® deployment in the environment. CommVault and the City of Durham will work together to accomplish the following tasks:

Create a Tracking Policy

Schedule the VaultTracker® Policy

Add an Export Location

Export Media via the Scheduled Policy

Overview VaultTracker® reports

## **Microsoft Windows File System iDataAgent**

CommVault will install and configure Microsoft Windows File System iDataAgent(s) as part of Implementation Services. The Microsoft Windows File System iDataAgent is designed to provide comprehensive load balancing and failover among storage resources within the City of Durham environment. These services cover the implementation and verification of the Microsoft Windows File System iDataAgent(s) in the environment. CommVault and the City of Durham will work together to accomplish the following tasks:

Install and Configure Microsoft Windows File System iDataAgent on City of Durham designated host or group of hosts.

Configure Microsoft Windows File System iDataAgent specific settings in accordance with Solution Design.

Associate Storage Policy with installed Microsoft Windows File System iDataAgent.

Associate Schedule Policy with installed Microsoft Windows File System iDataAgent.

Perform test backup of subclient(s) on City of Durham-designated host or group of hosts.

Perform test restore of a file or folder from a client within the City of Durham-designated host or group of hosts.

## **NAS NDMP**

CommVault will install and configure NDMP as part of Implementation Services. The HDPS NAS NDMP configuration option is intended to provide data protection and recovery capabilities for City of Durham using Network Attached Storage appliances within their enterprise.

These services cover the implementation and verification of the NAS NDMP configuration option within the City of Durham environment. CommVault and the City of Durham will work together to accomplish the following tasks:

Verification of NDMP configuration to be deployed. HDPS NAS NDMP supports both tape libraries directly attached to the NAS appliance and NDMP Remote Server.

Verification that NDMP services are enabled on the NAS appliance and that the NAS appliance Operating System is supported by HDPS NAS NDMP.

Install and Configure NAS NDMP capabilities on City of Durham -designated Media Agents.

**NOTE:** that the tape drives used for NDMP-based backups must be attached and enabled before using this option. Hitachi NAS NDMP does not support libraries attached to the file server, thereby requiring NDMP Remote Server.

Associate NDMP Storage Server with NAS NDMP.

Associate Storage Policy with NAS NDMP.

Perform test backup of the configured NAS appliance.

Perform test restore from the configured NAS appliance backup.

### **1-Touch**

CommVault will install and configure 1-Touch and perform test data recovery. The CommVault 1-Touch System is designed to provide a streamlined and integrated full system recovery method within the City of Durham environment. These services cover the implementation and verification of the 1-Touch services in the environment. CommVault and the City of Durham will work together to accomplish the following tasks:

Install and configure 1-Touch Server components.

Configure Platform Distributions for required 1-Touch client platforms.

Install and configure 1-Touch Client agent on City of Durham -designated host client.

Perform test backup of installed host client.

Build 1-Touch recovery boot CD.

Perform Test Restore of host client.

### **Virtual Server iDataAgent**

CommVault will configure the Virtual Server backups as part of Implementation Services. These services cover the implementation and verification of the integrated HDPS and Virtual Server deployment in the environment. CommVault and the City of Durham will work together to accomplish the following tasks:

Verify the ratio of datastores to subclients to identify the distribution of VM data over the number of Proxy Servers allocated for this deployment.

Install the Virtual Server Agent on the VMware Virtual Consolidated Backup Framework (VMware) server.

Configure Virtual Server Instances.

Configure Guest Discovery Rules.

Configure Virtual Guest subclients.

Add Guests to subclients.

**NOTE:** Requires a pre-installed and fully functioning Virtual Server host server with SAN connectivity.

Test File, Image and Disk (whichever are configured in City of Durham environment) Full and differential backups of the virtual machine(s).

### **Microsoft Exchange iDataAgent**

CommVault will install and configure Microsoft Exchange Database *iDataAgent*(s) as part of Implementation Services. The Microsoft Exchange Database *iDataAgent* is designed to provide comprehensive load balancing and failover among storage resources within the City of Durham environment. These services cover the implementation and verification of the Microsoft Exchange Database *iDataAgent*(s) in the environment. CommVault and the City of Durham will work together to accomplish the following tasks:

#### **Exchange Database *iDataAgent***

Install and Configure Microsoft Exchange Database *iDataAgent* on City of Durham-designated host or group of hosts.

Configure Microsoft Exchange Database *iDataAgent* specific settings in accordance with Solution Design.

Associate Storage Policy with installed Microsoft Exchange Database *iDataAgent*.

Associate Schedule Policy with installed Microsoft Exchange Database *iDataAgent*.

Perform test backup of a storage group that is designated by the City of Durham.

Perform a test recovery of the test database backup to a designated recovery location.

#### **Exchange Mailbox *iDataAgent***

Install and Configure Microsoft Exchange Mailbox *iDataAgent* on City of Durham-designated host or group of hosts.

Configure Microsoft Exchange Mailbox *iDataAgent* specific settings.

Associate Storage Policy with installed Microsoft Exchange Mailbox *iDataAgent*.

Associate Schedule Policy with installed Microsoft Exchange Mailbox *iDataAgent*.

Perform test backup of a mailbox or group of mailboxes that is designated by the City of Durham.

Perform a test recovery of an item within a mailbox that was included with the test backup group.

### **Microsoft SharePoint iDataAgent**

CommVault will install and configure the SharePoint Portal Services Database *iDataAgent* and perform test data recovery. The HDPS SharePoint Portal Database *iDataAgent* is designed to provide comprehensive coverage of the SharePoint Portal Services backup and recovery requirements in the City of Durham environment. These services cover the implementation and verification of the SharePoint Portal Services Database *iDataAgent* (s) in the environment. CommVault and the City of Durham will work together to accomplish the following tasks:

Install and Configure SharePoint Portal Services Database *iDataAgent*.

An account will be needed during installation to configure the SharePoint Portal Services *iDataAgent* which must have permissions to traverse the entire SharePoint structure. This account will also be used to run the *iDataAgent* services under Windows.

Associate Storage Policy with installed SharePoint Portal Services Database *iDataAgent*.

Associate Schedule Policy with installed SharePoint Portal Services Database *iDataAgent*.

Perform test backup of the configured SharePoint Portal Services Database *iDataAgent*.

Perform test restore of the configured SharePoint Portal Services Database *iDataAgent*.

## **SharePoint Document *iDataAgent***

CommVault will install and configure the SharePoint Portal Services Document *iDataAgent* and perform test data recovery. The HDPS SharePoint Portal Document *iDataAgent* is designed to provide comprehensive coverage of the SharePoint Portal Services backup and recovery requirements in the City of Durham environment. These services cover the implementation and verification of the SharePoint Portal Services Document *iDataAgent* (s) in the environment. CommVault and the City of Durham will work together to accomplish the following tasks:

Install and Configure SharePoint Portal Services Document *iDataAgent*.

An account will be needed during installation to configure the SharePoint Portal Services *iDataAgent* which must have permissions to traverse the entire SharePoint structure. This account will also be used to run the *iDataAgent* services under Windows.

Associate Storage Policy with installed SharePoint Portal Services Document *iDataAgent*.

Associate Schedule Policy with installed SharePoint Portal Services Document *iDataAgent*.

Perform test backup of the configured SharePoint Portal Services Document *iDataAgent*.

Perform test restore of a document within the SharePoint Portal Services document Library.

## **Database Protection Services**

As part of Field Implementation, the HDPS Database Protection Service provides comprehensive services for the configuration of database backup and recovery operations in the City of Durham's environment. These services will cover the implementation and verification of the database *iDataAgent*(s) in the environment. CommVault and the City of Durham will work together to accomplish the following applicable tasks:

Database Environment Review –Includes a review of Client System(s) CPU, Memory and IPC Resources, Database, Application, Logs, and User dynamics to determine a backup and recovery configuration which meets user requirements.

Installation of HDPS Database *iDataAgent* module(s) –Includes the installation and configuration of services necessary to deploy the Database *iDataAgent* module(s). Within the scope of this engagement, this service will include HDPS *iDataAgent* cluster support in a supported SAN / NAS environment.

**NOTE:** The Windows database instance(s) must be down for the brief installation of the *iDataAgent* module(s).

**NOTE:** Following configuration of the database *iDataAgent* Windows servers require a reboot. UNIX based servers do not.

## Exhibit B

### Hitachi Data Protection Suite v9, Capacity License Agreement Overview, (Enterprise Infrastructure)

#### Capacity License Agreement

In converting to a Capacity License Agreement (CLA), the following features will be included as standard elements of our offering:

#### Enterprise Infrastructure

- One CommServe
- Media Agent (all types and levels)
- Media Management Options
  - Standard Disk (DDO)
  - Base Connectors: Tape, Disk, Virtual Tape Library, and Optical Library
  - Sharing Connectors: Tape, Virtual Tape, and Dynamic Disk
  - Tape Drive and Shared Tape Drive
  - Optical Library Capacity
  - Advanced Disk Deduplication (ADO)
  - Consolidated Data Storage Option (CDSO)
  - Premium Connectors: Compliance, WORM, Centera, and HCAP
- Advanced Feature Packs
  - Disaster Recovery
  - CommCell Migration
  - Primary Data Encryption Enabler
  - GridStor Enabler and Managed Media Agents
  - CommCell Explorer Enabler
  - CommCell Data Erase Enabler
  - SNMP Integration Enabler
  - Offline Mining Tools for granular recovery
- Monitor
  - Monitor Server
  - Monitor Server
  - Monitor Managed Media Agents
  - 1-Touch Server
  - Data Mining
  - Storage Manager
  - Storage Manager Server
  - Snapshot Enabler
  - Network Attached Storage Enabler

## Data Protection Client Package

The Data Protection Client Package includes the right to deploy and use as many individual licensed objects for the amount of capacity purchased. Functionality for this feature includes:

- File System iDAs (all types and tiers, except snap enabled)
- Application iDAs (all types and tiers, except snap enabled)
- Virtualization iDAs
- Workstation, Laptops, and WBA iDAs
- Continuous Data Replicator (except Recovery Points)
- 1-Touch Clients
- HDPS Monitor Client
- Snapshot Clients
- Recovery Director
- Image Level
- ProxyHost
- ProxyHost plus Image Level
- QR Snap Manager
- SnapProtect
- O S S V
- Any Snapshot Enabler
- Recovery Points
- NAS  
iDAs, Tape Server, Restore Enabler
- Storage Manager Clients
- File, Application, NAS

## Archive Client Package

Archive Client Package includes the right to deploy and use as many individual licensed objects for the amount of capacity purchased. Functionality for this feature includes:

- File System Archive iDAs
- Application Archive iDAs
- SharePoint, Exchange, Notes, etc.
- NAS Archive iDAs  
CIFS  
NetApp fPolicy  
Celerra Data Mover

## The Benefits of a CLA: At-A-Glance

Hitachi Data Protection Suite's next generation data management platform greatly simplifies the ability to manage overall capacity that is being protected—so capacity-based licensing is an attractive option. The benefits of a CLA include the following:

**Simplified Licensing:** A CLA gives you the flexibility to deploy application licenses at will, rather than engaging the procurement cycle for one-off purchase requests. Simply go to our portal and download what you need.

**Simplified Capacity Usage Monitoring:** License capacity is encoded into the licensing key. This is measured via a dashboard mechanism that provides an automatic, progressive alert when maximum capacity is being approached – at 85%, 100%, and 110%. This monitoring feature helps you plan for future capacity buys.

**Ease of Configuration:** All settings are configurable and are reassessed daily, so adjustments can be made as needed to afford maximum flexibility to clients.

**Architectural Flexibility:** All architectural options are available to you. Whether you would like numerous departmental solutions or a centralized data protection platform, all options are equally available based on your organizational preferences. If you are considering leveraging data deduplication, the HDPS Enterprise CLA provides you with the flexibility of leveraging deduplication on the source side, the target side, inline deduplication, post-process deduplication, or encrypted deduplication using disk, tape, or cloud storage as the media of that deduplication. All these architectural options are equally available for your specific technology needs and integrated to provide a complete deduplicated solution.

**Advanced Availability and Secure Data Protection:** High availability data protection solutions and data security on protected data are often expensive features that can require difficult decisions on a cost/benefit analysis basis. HDPS's Capacity License Agreements eliminate those tough choices by providing a range of high availability options (CommCell Disaster Recovery, Gridstor Multi-pathing, Deduplication Aware Replication, and 1-Touch System Recovery) as well as data security options (Data Encryption for in-flight data and CommCell Data Erasure).

**Improved Storage Utilization:** Improved efficiency of storage based on deduplication, Storage Resource Management, and consolidated hardware snapshot management.

**Wide Product Suite with Right of Exchange:** The wider use of the HDPS Product Suite combined with the Right of Exchange between licensing keys enables a wide selection of product features that can be customized to your specific needs. As your needs change, simply exchange licensing keys for the ones that are a better current fit.

**No Surprises!** As above, the audit capability is built into the licensing key and easily accessible, empowering the end-user to self-monitor usage and deploy additional resources as needed, in plenty of time.

## Exhibit C

### City of Durham Insurance Requirements

Contractor shall purchase and maintain insurance coverage for not less than the following:

**Commercial General Liability**, covering:

- Premises/operations
- Products/completed operations (two years minimum, from project completion)
- Broad form property damage
- Contractual liability
- Independent contractors, if any are used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- Combined single limit not less than \$2,000,000 per occurrence, with an annual aggregate on not less than \$4,000,000.

**Commercial Auto Liability**, covering:

- Symbol 1, all vehicles
- Combined single limit of \$2,000,000
- City of Durham must be named additional insured

**Professional Liability**, covering:

- Covering claims arising out of professional advisement / consultation services performed in connection with this contract
- Self-insured retentions/deductibles in excess of \$25,000 must be approved by the City Finance Director
- Combined single limit not less than \$1,000,000 per occurrence; if coverage is only available on claims made basis, then additional coverage requirements may apply, subject to review of City Finance Director

**Workers' Compensation Insurance**, covering:

- Statutory benefits;
- Covering employees; covering owners partners, officers, and relatives (who work on this contract) (this must be stated on the certificate)
- Employers' liability, \$1,000,000
- Waiver of subrogation in favor of the City of Durham

**Insurance shall be provided by:**

- Companies authorized to do business in the State of North Carolina
- Companies with Best rating of A-, VII or better.

**Insurance shall be evidenced by a certificate:**

- Providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- Certificates shall be addressed to:

City of Durham,  
Technology Solutions Department  
Kerry L. Goode  
101 City Hall Plaza  
Durham, NC 27701

- The insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Contractor can begin any work under this contract.

## **Exhibit D**

### **Maintenance Support Hardware and Software**

#### **Hardware**

Hitachi Data Systems will be the first point of contact for questions or problems with all any HDS products sold by Hitachi Data Systems. Hitachi Data Systems will provide worldwide level 1 and level 2 support for these products, using normal field escalation procedures. Level 3 support for all HDS products will be coordinated with the Technical Support Center by the TRC. If a problem should occur with a HDS product that cannot be resolved by the TRC it will be escalated to Hitachi Ltd. in Japan.

HDS Technical Support will support all Hitachi Data Systems TRCs and Engineering Centers. All problem management and customer contact will be done by Hitachi Data Systems. HDS Technical Support will provide all engineering support to Hitachi Data Systems as needed to isolate the problem's cause, make bug fixes to HDS supplied code and produce the object and source code required by Hitachi Data Systems to support and update all HDS Products. The Hitachi Data Systems TRC will interface with Hitachi Ltd. Technical Support as needed on a 24x7 basis. TRC is the only HDS organization authorized to contact Hitachi Ltd. Technical Support directly. Most problems can be resolved within hours or one-day turnaround.

#### **Software**

##### **Onsite Maintenance Support Services Summary**

Hitachi Data Systems partners with CommVault to offer the following options for Onsite Maintenance and Support:

#### **Standard Service**

- Call Logging
  - Telephone Support
  - Remote Monitoring Service Tool (HiTrack)
  - Corrective maintenance: Repairs
  - Replacement Parts
  - Engineering / field Changes
  - Preventative Maintenance
- 
- Period of Maintenance: 24 Hours / Day 7 Days / Week
  - Targeted Response Time: 4 Hours – Critical Instances
  - Check for Availability
  - Available: 50 Miles / 80 Kilometers from Hitachi Data Systems Service Center

Exhibit E

Acumen I.T., LLC Price Quote

May 2, 2011

**QUOTE**

HDPS6160938

City of Durham Backup & Recovery Solution

**TERMS**

Net 30

QUANTITY	DESCRIPTION	Price	AMOUNT
1	<b>Hitachi Data Protection Suite Solution:</b>		\$795,731.00
	Software	\$381,448.00	
	Maintenance	\$343,303.00	
	Travel, Implementation & Training	\$190,980.00	
	Software Credit	--	
		\$120,000.00	
	<i>* Includes 5 Years Maintenance: 24/7/365, 4-hour Onsite Response.</i>		
1	<b>Storage Hardware:</b>		\$326,632.00
	Primary Data Center	\$388,316.00	
	Disaster Recovery Data Center	\$338,316.00	
	Hardware Credit	--	
		\$400,000.00	
	<i>* Includes 5 Years Maintenance: 24/7/365, 4-hour Onsite Response</i>		
1	<b>Server Hardware</b>		\$42,193.00
	Primary Data Center	\$42,193.00	
	<i>* Includes 5 Years Maintenance:</i>		
<b>Sales Tax Applies Total</b>			<b>\$1,164,556.00</b>

**The City of Durham  
Hitachi Data Protection Suite 9 – Hardware Specifications**

<p><b>CommServe</b></p>	<p><b>Server Requirements</b></p> <ul style="list-style-type: none"> <li>● Windows 2008 R2x64</li> <li>● 2-Socket Quad Core CPU</li> <li>● 16GB RAM</li> <li>● GigE NIC</li> </ul> <p><b>Primary RAID Set</b></p> <ul style="list-style-type: none"> <li>● Two 146GB 10K SAS drives –RAID1</li> <li>● Single logical volume for OS/Application –format to 4K block size</li> </ul>
<p><b>Media Agent</b></p>	<p><b>Server Requirements</b></p> <ul style="list-style-type: none"> <li>● Windows 2008 R2 x64 or Linux x64</li> <li>● 2-Socket Quad Core CPU</li> <li>● 32GB RAM</li> <li>● Quad GigE NIC, or 10GigE NIC (Client/Backup Network)</li> <li>● HBA (separate ports for disk &amp; tape connectivity) or additional Quad GigE NIC/10GigE NIC (Storage Network)</li> </ul> <p><b>Primary RAID Set</b></p> <ul style="list-style-type: none"> <li>● Two 600GB 10K SAS drives – RAID1</li> <li>● 100GB logical volume for OS/Application –format to 4K block size</li> <li>● 500GB logical volume for index cache –format to 4K block size</li> </ul> <p><b>Secondary RAID Set</b></p> <ul style="list-style-type: none"> <li>● Four 146GB 15K SAS drives –RAID10</li> <li>● 292GB logical volume for dedupe database –format to 4K block size</li> <li>● SAN LUN’s recommended for larger/multiple dedupe databases</li> <li>● iSCSI not supported</li> </ul>
<p><b>Disk Library</b></p>	<p><b>Magnetic/Disk Library Requirements</b></p> <ul style="list-style-type: none"> <li>● Recommended Size of 72TB</li> <li>● 7200RPM SATAII or SAS hard drives</li> <li>● Hardware RAID 5 or similar configuration (varies by disk vendor)</li> <li>● Formatted in 64K block size</li> <li>● Presented to Media Agent as 8TB (max size) volumes</li> </ul>
<p><b>Search Server</b></p>	<p><b>Server Requirements</b></p> <ul style="list-style-type: none"> <li>● Windows 2008 R2 x64 Enterprise</li> <li>● 2-Socket Quad Core CPU</li> <li>● 24GB RAM</li> <li>● GigE NIC</li> </ul>

<p><b>Search Server</b></p>	<p><b>Primary RAID Set</b></p> <ul style="list-style-type: none"> <li>• Two 300GB 10K SAS drives – RAID1</li> <li>• 300GB logical volume for OS/Application – format to 4K block size</li> </ul> <p><b>Secondary RAID Set</b></p> <ul style="list-style-type: none"> <li>• Four 500GB 10K SAS drives – RAIDS</li> <li>• 1.5TB logical volume for search indexes – format to 4K block size</li> <li>• Internal disk or fiber SAN LUN. iSCSI not supported</li> </ul>
<p><b>Array Configuration</b></p>	<p><b>Disk Considerations for Performance &amp; Capacity</b></p> <p>CommVault recommends using 7200RPM SATA drives for the ideal balance between performance and capacity. Smaller drives (i.e. 1TB) are ideal in high performance environments where larger drives (i.e. 2TB) are best suited for deeper retention.</p> <p>CommVault recommends having a single disk spindle per concurrent backup stream. For example, an environment requiring 10 concurrent backups could have 10 1TB SATA drives (10TB capacity) or 10 2TB SATA drives (same performance but 20TB capacity).</p>

CommVault Systems, Inc.

End User License and Limited Warranty Agreement

CommVault Simpana® Software Release 9.0.0

(including Microsoft® SQL Server™ 2008 Enterprise Edition, SQL Server™ 2008 Express Edition and Windows Pre-Installation Environment)

End User License Agreement

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