



## **Master Services Agreement – MOD. 4**

(End User Services, Hardware, and Print)

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

*Xerox Corporation*

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## MASTER SERVICES AGREEMENT (End-User Services)

This **Master Services Agreement** (this “**Agreement**”), effective as of September 14, 2018 (the “**Effective Date**”), is between the **Virginia Information Technologies Agency (“VITA”)** pursuant to §2.2-2012 of the Code of Virginia and on behalf of the Commonwealth of Virginia (sometimes hereinafter the “Commonwealth”), and Xerox Corporation (the “**Supplier**”), a NY Corporation with its principal offices located at 201 Merritt 7, Norwalk, Connecticut 06851-1056 (each, a “**Party**” and collectively, the “**Parties**”). This Agreement, includes (a) the following terms and conditions (i.e., this introductory paragraph through **Section 23.27 (Contract Documents)**) (these “**General Terms and Conditions**”), and (b) any Exhibits or other attachments identified in **Section 23.27 (Contract Documents)**, which are incorporated into this document and made a part hereof as if stated herein.

Capitalized terms used in this Agreement have the meaning as provided (i) where each term is used or (ii) in **Exhibit 1.1 (Definitions)**. **Exhibit 1.1 (Definitions)** lists the capitalized terms used in this Agreement and either provides a definition for the term or provides a reference to the particular document and section containing the definition.

Whereas, VITA provides Commonwealth-wide IT infrastructure and related services that include the provision of enterprise email, IBM Mainframe services, management of enterprise security, an on-premises data center, physical and virtual servers, a range of data storage services, and the network backbone to connect these services to each other and to the end-user;

Whereas, the Commonwealth end-user consumes and obtains value from the Commonwealth’s IT infrastructure by means of end-user computing devices such as desktop computers, laptops, and a variety of peripherals; and

Whereas, VITA wishes to enter into this contract to provide the end-user computing devices and associated services to maximize productivity and connectivity for Commonwealth end-users.

Now therefore, in consideration of the mutual promises and covenants contained herein, and of other good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, VITA and Supplier hereby agree as follows:

### 1. SERVICES

**1.1 Scope of Services.** Supplier shall provide to VITA and other Customers designated by VITA the following services (the “**Services**”):

- 1.1.1 All functions, responsibilities, activities, deliveries, and tasks necessary to fulfill the technical and solution requirements, along with all related obligations of the Supplier, provided in **Exhibit 2 (Description of Services and Solution)** and all subsequent Statements of Work for Solution Services hereunder.
- 1.1.2 The functions, responsibilities, activities, deliveries, and tasks that are reasonably related to any of the Services and that were performed in the twelve (12) month period prior to the Effective Date by (a) employees, contractors, third party suppliers and other personnel of VITA or any other Customer who are displaced, or whose Functions are displaced, as a result of this Agreement; or (b) non-personnel resources transferred or made available to the Supplier or displaced, or the Functions of which are displaced, as a result of this Agreement.

**1.2 Cloud Services.** In performing any cloud-based Services or Functions, Supplier will ensure that the cloud-based Services comply with the applicable VITA Rules, standards, policies and guidelines published by VITA from time to time.

**1.3 Solution Services.**

1.3.1 Solution Services. In addition to any Services then provided for in this Agreement, Supplier shall perform agreed upon one-time or nonrecurring services that are within the scope of the Agreement, but that are not included in the Service Catalog or otherwise reasonably necessary to satisfy any requirement contained in **Exhibit 2.1** of the Agreement (“Solution Services”). Solution Services must be requested and approved by VITA through the execution of a statement of work referring to this Agreement and providing details of the Solution Services (each, a “**Statement of Work**”). Statements of Work are not binding on the Parties until fully executed by authorized representatives of each Party.

1.3.2 Statements of Work.

- (a) Request and Prioritization. Only VITA may request, define and set the priority for Solution Services. Statements of Work may be used as the means to add Solution Services to be provided by Supplier. Services that are available through the Service Catalogue shall be ordered through Service Requests (rather than through use of Statements of Work). Supplier shall perform the Solution Services as set forth in each Statement of Work. A form of Statement of Work is attached to this Agreement as **Attachment A (Form of Statement of Work)**.
- (b) Limitations on Statements of Work. Statements of Work are not intended, and shall not be used by either of the Parties to re-negotiate or otherwise change terms and conditions that have been negotiated and set forth in the Agreement. It is expressly acknowledged and agreed by Supplier and VITA that under no circumstances shall Services then currently in scope to be provided by Supplier under this Agreement be converted into Solution Services for which there shall be additional Charge.
- (c) Charges for Solution Services.
  - (i) To the extent Solution Services can be performed by Supplier using Supplier Personnel already assigned to the Services within their proportional assignment (i.e., Supplier Personnel assigned 50% to the Services would not have to exceed that scope) without affecting schedules or Service Levels or otherwise adversely affect the Services, the Solution Services will be performed at no additional Charge, except to the extent of required Third Party expenses necessary to the Solution Services, which Third Party expenses shall be subject to the prior approval of VITA.
  - (ii) To the extent such Solution Services cannot be performed by Supplier Personnel in accordance with **Section 1.3.3(a)**, VITA may, if reasonably practicable, agree to temporarily forego Service Levels or other contractual performance to permit the Solution Services to be performed using the Supplier Personnel already assigned to the Services at their then current assignment levels.

- (iii) To the extent such Solution Services cannot be performed by Supplier Personnel in accordance with Sections 1.3.2(c)(i) and 1.3.2(c)(ii), Supplier's Charges for Solution Services shall be as mutually agreed by VITA and the Supplier.
- (d) Preparation and Execution of Statements of Work. If VITA so requests, Supplier shall promptly prepare a detailed proposal and draft Statement of Work, including applicable Charges, if any. Supplier shall make any amendments reasonably requested by VITA and mutually agreed by the Parties. Upon agreement by VITA and Supplier to the draft Statement of Work, VITA shall prepare the actual Statement of Work for the Solution Services, for execution by VITA and Supplier. Once executed, the Statement of Work will be deemed part of this Agreement and the Solution Services shall constitute part of the Services hereunder. Statements of Work shall be effective only when signed by both Parties. The hours expended by Supplier in preparing Statements of Work, Statement of Work amendments or other proposals or plans or reporting on the status of Statements of Work shall not be chargeable to VITA.

**1.4 Managed Environment.** VITA is establishing and building a multi-provider, integrated services platform (the “**Integrated Services Platform**”) for the delivery of certain IT services to VITA and the other Customers within the IT environments supported by VITA (collectively, the “**Managed Environment**”), as is further described in **Exhibit 1 (Integrated Services Platform)** and by further notice from VITA to Supplier from time to time. The Integrated Services Platform is and shall comprise various services provided by various third party suppliers, including the Services and Supplier (each such supplier, an “**Integrated Supplier**”), with which VITA shall contract from time to time to provide services to VITA and other Customers. The Managed Environment requires coordination, cooperation and integration among the Integrated Suppliers, notwithstanding that they may otherwise view themselves as competitors, in order to work together toward the common goal of uninterrupted, high quality services to VITA and the other Customers. In this regard, Supplier must perform the Services and its other obligations under this Agreement, and in connection therewith, interact and cooperate with others within the Managed Environment in a manner that, as a foremost guiding principle, first considers the best interests of VITA and the other Customers. In connection with Supplier’s role as an Integrated Supplier within the Managed Environment, Supplier acknowledges and agrees to the following.

In performing the Services, Supplier, as an Integrated Supplier, shall fully cooperate with and work in good faith with VITA and the other Customers and Integrated Suppliers, including any Integrated Supplier with which VITA may contract, from time to time, to provide multisourcing services integration for the Managed Environment (any such Integrated Supplier designated so by VITA, the “Multisourcing Services Integrator” or “MSI”) to support and promote the operation and objectives of the Integrated Services Platform.. Such cooperation may include, in addition to other provisions reflected in this Agreement or requested by VITA: (i) timely providing physical access and electronic access to business processes and associated Equipment, Materials and/or Systems to the extent necessary and appropriate for Customers or other Integrated Suppliers to perform the work required of or assigned to them; (ii) timely providing written requirements, standards, policies or other documentation for the business processes and associated equipment, materials or systems procured, operated, supported or used by Supplier in connection with the Services; (iii) timely providing access to VITA Data to Customers and/or other Integrated Suppliers; (iv) timely providing cooperation and assistance in connection with Transition Out Assistance to facilitate the orderly transfer of terminated Services from Supplier to Customers and/or other Integrated Suppliers and ensuring that there is no degradation in the performance of Services caused by the adjustments made by Supplier during and following such transfer of Services; (v) establishing procedures and other arrangements with other Integrated Suppliers to ensure continuity of seamless service (including the Services) to the Customers; ; and (vi) any other cooperation or assistance reasonably necessary for the Customers and other Integrated Suppliers to perform their operations and activities.



1.4.1 Integrated Services Platform. The Integrated Services Platform will include the development and utilization of a Service Management Manual and Operating Level Agreements as follows:

- (a) **Service Management Manual**. As part of managing the Integrated Services Platform, VITA anticipates developing a Service Management Manual (the “Service Management Manual”) which shall serve as a common document shared among the Integrated Suppliers (including Supplier) providing descriptions of the Managed Environment and the performance by each Integrated Supplier of its respective obligations to VITA and the other Customers in coordination and cooperation with the Customers and other Integrated Suppliers. Until VITA’s adoption of the Service Management Manual, the Parties shall utilize the Policy and Procedures Manual in accordance with Section 1.4.2 (**Policy and Procedures Manual**)
- (b) **Operating Level Agreements**. If, when and as requested by VITA, Supplier shall enter into mutually agreed joint governance and issue resolution document(s), including operating level agreements, with other Integrated Suppliers.

In no event will any provision of this Agreement, or any right or benefit of VITA or the Customers provided for under this Agreement, be reduced, limited or otherwise adversely affected (including through any increase in cost, charge or expense) as a consequence of the terms of the Service Management Manual or any Operating Level Agreement.

1.4.2 Policy and Procedures Manual. Without limiting the foregoing, until the Service Management Manual has been implemented by agreement of the Parties in accordance with **Section 1.4.2(e) (Transition to Service Management Manual)**, the following shall apply.

- (a) Policy and Procedures Manual Delivery and Content. If requested by VITA, Supplier shall deliver to VITA for its review, comment and written approval (i) a reasonably complete draft of the Policy and Procedures Manual within thirty (30) days after the Effective Date, and (ii) a final draft of the Policy and Procedures Manual within sixty (60) days after the Effective Date. VITA shall have at least fifteen (15) Business Days to review each draft Policy and Procedures Manual and provide Supplier with comments and revisions. Supplier shall then incorporate any comments or changes of VITA into the Policy and Procedures Manual and shall deliver a final revised version to VITA within fifteen (15) Business Days of its receipt of such comments and changes for VITA’s final written approval.

At a minimum, the Policy and Procedures Manual shall include:

- (i) the procedures for Customer/Supplier interaction and communication, including: (A) call lists; (B) procedures for (and limits on) direct communication by Supplier with Customer personnel; (C) problem management and escalation procedures; (D) priority and project procedures; (E) Acceptance testing and procedures; (F) quality assurance processes and procedures and internal controls; (G) a schedule, format and required attendees for meetings regarding performance reporting, account relationship management, issues management, risk management, request management and financial management; (H) Change Control Procedures; and (I) Disaster Recovery/Business Continuity plans;
- (ii) the root cause analysis process; and

- (iii) practices, policies and procedures addressing any other issues and matters as VITA shall require.

Supplier shall incorporate VITA's then current policies and procedures in the Policy and Procedures Manual.

- (b) Compliance. Supplier shall perform the Services in accordance with applicable Laws, VITA Rules and VITA's then current policies and procedures until the Policy and Procedures Manual is finalized and agreed upon by the Parties. Thereafter, Supplier shall perform the Services in accordance with the Policy and Procedures Manual, all applicable Laws and all other terms and conditions of this Agreement. In the event of a conflict between this Agreement and the Policy and Procedures Manual, the order of precedence rules of **Section 23.8 (Order of Precedence)** shall apply (and this Agreement shall control).
- (c) Maintenance, Modification and Updating. Supplier shall promptly modify and update the Policy and Procedures Manual to reflect changes in the operations or procedures described therein, to reflect changes in the work to be performed, and to comply with VITA Rules. Supplier shall provide the proposed changes in the manual to VITA for review, comment and written approval. Supplier shall maintain the Policy and Procedures Manual so as to be accessible electronically to VITA and Customer management and Users via a secure web site in a manner consistent with VITA's security policies.
- (d) Regular Review. The Parties shall meet to perform reviews of the Policy and Procedures Manual as reasonably requested by VITA.
- (e) Transition to Service Management Manual. If and to the extent the Policy and Procedures Manual is superseded by the Service Management Manual, Supplier shall comply with the Service Management Manual and cooperate with VITA and its designee(s) in its maintenance and development. Until such time as the Service Management Manual shall have superseded the Policy and Procedures Manual in accordance with the foregoing and unless otherwise provided, or the context shall otherwise require, references in this Agreement to the Service Management Manual shall be deemed references to the Policy and Procedures Manual.
- (f) Work Product. As between the Parties, the Policy and Procedures Manual will be deemed to be a Work Product owned by VITA.

#### 1.4.3 Service Management Manual

- (a) Upon its adoption by VITA, the Service Management Manual will serve as a common document shared among the Integrated Suppliers, which all will operate in accordance with and be subject to the terms therein, as applicable to each such party. Without limiting the foregoing, the Service Management Manual will provide detailed descriptions of the Managed Environment and the manner in which functions will be performed by the Supplier and each of the other Integrated Suppliers, including:
  - (i) Equipment, Materials and Systems to be procured, used or supported;
  - (ii) Documentation (including manuals, user guides and specifications) to be created and maintained by the Supplier and the other Integrated Suppliers;

- (iii) specific activities to be undertaken by the Supplier in connection with each Service, including, where appropriate, the direction, supervision, monitoring, staffing, reporting, planning and oversight activities to be performed by the Supplier under this Agreement;
- (iv) Operational Change Control Procedures and Contract Change Control Procedures;
- (v) procedures for VITA, Customers and the Integrated Suppliers to interact, communicate, escalate and resolve issues, exchange information and provide access to each other;
- (vi) checkpoint reviews, testing, acceptance, controls and other procedures to be implemented and used to assure service quality;
- (vii) processes, methodologies and controls to be implemented and used by the Integrated Suppliers to comply and confirm compliance with (1) VITA Rules; and (2) other obligations in the applicable agreements, including compliance with Laws; and
- (viii) other provisions related to the Managed Environment, as requested by VITA.

The Service Management Manual will be initially created and continuously updated and enhanced throughout the Term, with the MSI taking overall responsibility for preparing, updating, maintaining and ensuring the accuracy of the Service Management Manual, with the cooperation and support of the other Integrated Suppliers. The Supplier will work with the MSI and the other Integrated Suppliers in creating and maintaining the contents of the Service Management Manual, pursuant to a process further described in this Agreement.

- (b) The Supplier will perform the Services in accordance with the most recent VITA-approved version of the Service Management Manual.
- (c) As between the Parties, the Service Management Manual will be deemed to be a Work Product owned by VITA.

#### 1.4.4 Operating Level Agreements

- (a) Among other things, Operating Level Agreements will:
  - (i) govern how the parties thereto coordinate activities, interact and integrate processes, ensure that there are no gaps or unnecessary duplication of responsibility, and will define at an operating level the demarcation of Functions and the touch points between such parties; and
  - (ii) otherwise describe key dependencies between such parties.
- (b) The Supplier will execute Operating Level Agreements with the other Integrated Suppliers.

- (c) The Supplier will ensure that all Operating Level Agreements remain current and consistent with all other relevant documentation (e.g., the Service Management Manual, VITA Rules).
- (d) Each Operating Level Agreement will be subject to VITA's review, comments and approval. The Supplier will bear the responsibility to ensure that all other applicable Integrated Suppliers incorporate VITA's comments, resolve any VITA concerns, and obtain VITA's written approval prior to finalization of any such Operating Level Agreement. Similarly, in order for any amendment to an Operating Level Agreement to become effective, such amendment must be reviewed and approved in writing by VITA.

**1.5 Implied Services.** If any Functions, other than those expressly retained by VITA or any other Customer (or assigned to another Integrated Supplier) under this Agreement, are reasonably required for, or are incidental to or inherent in, the proper performance and provision of the Services (regardless of whether they are specifically described in this Agreement), they will be deemed to be implied by and included within the scope of the Services to be provided by the Supplier to the same extent and in the same manner as if specifically described in this Agreement.

**1.6 Evolution of the Services.** Throughout the Term, the Supplier will seek to improve the quality, efficiency and effectiveness of the Services to keep pace with technological advances and support VITA's (and Customers') evolving business and information technology needs. Without limiting the generality of the foregoing, the Supplier will: (a) continuously identify and apply 'best practice' techniques and methodologies in performing and delivering the Services; (b) train Supplier Personnel in new techniques and technologies used generally within the Supplier's organization or the information technology services industry and approved by VITA for use in rendering the Services; and (c) make investments to maintain the currency (both generally and in accordance with the particular requirements of this engagement) of the Supplier's tools, infrastructure, software and other resources that the Supplier is required to provide under the terms of this Agreement. For clarity, changes in the Services pursuant to this **Section 1.6 (Evolution of the Services)** will be considered part of the Supplier's then-current Services responsibilities and will not be considered Additional Services.

## **1.7 Customers**

**1.7.1 VITA Responsibility.** VITA shall be responsible for payment for the properly invoiced Services on behalf of the Customers under this Agreement.

### **1.7.2 Customers**

- (a) The Supplier will provide the Services to the Customers. At VITA's option, all or any portion of the Services may be utilized by any Customer for any purpose whatsoever. Where this Agreement provides for a VITA right to approve, accept, review or consent, such right may apply to any applicable Customer as directed by VITA.
- (b) For purposes of this Agreement, the Services will in all cases be deemed to be provided to VITA, and VITA will remain responsible for its own and all other Customers' receipt and use of the Services. For clarity, breaches of this Agreement impacting Customers, and damages incurred by Customers, will be deemed to impact and be incurred by VITA for purposes of VITA's rights and remedies under this Agreement; and VITA will be entitled to fully enforce such rights and exercise such remedies on behalf of itself and the Customers.

## 1.8 Services Not Exclusive; Variable

1.8.1 This Agreement is non-exclusive. Nothing in this Agreement will be construed to limit in any way VITA's ability to reduce the volumes of Services being provided by the Supplier or to request that other third parties provide, or propose to provide, services that are the same as or similar to the Services or that are part of the Services. Nothing in this Agreement prevents any Customers, including VITA, from contracting with other suppliers for any products and services, including products and services that are similar to or competitive with the Services or that are part of the Services, or from insourcing any such product or service and providing such product or service to itself or other Customers.

1.8.2 The Services are variable in volume. Such variations are provided for in the charging mechanisms set forth in **Exhibit 4 (Pricing and Financial Provisions)**. The Supplier will be responsible for adjusting the resources used to provide the Services to accommodate the changes in volume (regardless of the amount of time remaining in the Term) in such a manner as to comply with all Service Levels and its other obligations under this Agreement. The Supplier will not be entitled to receive an adjustment to the Charges resulting from such variations in volume except as set forth in **Exhibit 4 (Pricing and Financial Provisions)**. VITA makes no commitment for any minimum volume, scope, or value of the Services under this Agreement or to any minimum payments to be made to the Supplier.

**1.9 Resources Used for the Services.** Except as otherwise expressly provided in this Agreement, Supplier is responsible for providing and maintaining the facilities, infrastructure, personnel, Equipment, Software, Materials and other resources necessary to provide the Services. Certain models of Supplier-brand equipment are supported and serviced using remote data access. Remote data access also enables Supplier to transmit Maintenance Releases or Updates for software or firmware and to remotely diagnose and modify Supplier-brand Equipment to repair or correct malfunctions. Remote data will be transmitted to and from VITA in a secure manner in compliance with VITA Rules. Remote data access will not allow Supplier to read, view or download any VITA data, documents or other information residing on or passing through the Supplier-brand equipment, third party hardware or VITA's information management systems. Where available, VITA will allow Supplier, without charge, to establish and maintain remote data access for the purposes described above. Upon Supplier's request, VITA or the Customer will provide contact information for Supplier-brand Equipment such as name and address of the VITA or Customer contact and IP and physical addresses/locations of Supplier-brand Equipment. VITA and the Customer will provide Supplier with reasonable assistance to allow Supplier to have remote data access. Unless Supplier deems Supplier-brand Equipment incapable of remote data access, VITA and the Customer will ensure that remote data access is maintained at all times maintenance Services are being performed. Notwithstanding the foregoing, if VITA or a Customer determines that for security purposes, remote data access must remain disabled, then the Parties will agree on alternate maintenance and support Services for that Equipment.

**1.10 Disaster Recovery and Business Continuity.** **Exhibit 2 (Description of Services and Solution)** sets forth the Supplier's obligations with respect to Disaster Recovery and Business Continuity, including: (a) the development, maintenance, testing and execution of Disaster Recovery and Business Continuity plans with respect to the Services and the Supplier Facilities; and (b) obligations to cooperate with VITA, all other Customers, and Integrated Suppliers in the updating, testing and implementation of their own Disaster Recovery and Business Continuity plans with respect to their resources and facilities.

**1.11 Changes to Services.** “Change” means any material modification to the Services or Solution, including any Deliverable, Milestone, due date, and related obligation of Supplier. Only VITA may request a Change, which must be agreed to by the Parties as provided in this Section 1.11 (Changes). The process for implementing the Change shall be carried out through the Change Control Procedures.

1.11.1 Additional Services. “**Additional Services**” means Functions that VITA requests the Supplier to perform under this Agreement that (i) involve materially different obligations on Supplier and (ii) require materially additional levels of resources or expense of Supplier from the Services Supplier is then obligated to perform under this Agreement. Functions available through the Service Catalogue are not Additional Services, and shall be ordered through Service Requests with applicable pricing as provided in Exhibit 4 (Pricing and Financial Provisions).

1.11.2 Agreement, Documentation, Scope and Implementation of Changes. If VITA requests a Change, Supplier shall promptly prepare a proposal for VITA’s consideration. The Supplier shall prepare such proposal at no additional charge to VITA and shall deliver such proposal to VITA within ten (10) business days of its receipt of VITA’s request. VITA shall provide such information as the Supplier reasonably requests in order for Supplier to prepare its proposal. VITA may accept, approve or reject any proposal in its sole discretion and the Supplier shall not be obligated to perform any Change until a modification document is executed. Upon tentative agreement by the Parties to any Change, Supplier shall prepare a comprehensive outline of all necessary changes to this Agreement for VITA’s consideration, including any impact on the Charges, in accordance with **Section 1.11.3**. VITA shall prepare the modification document providing for the amendment of this Agreement, as well as the Service Management Manual and applicable Operating Level Agreements, for execution as appropriate. Upon execution of the modification document, the Changes shall constitute Services under this Agreement.

(a) Exceptions

- (i) A Service Request shall not be considered a request for a Change.
- (ii) Supplier may, without VITA prior approval, make Changes on a temporary emergency basis only if necessary to maintain the security or continuity of the Services. Changes made by Supplier on a temporary emergency basis shall not become part of the Services and shall not relieve Supplier of any of its obligations with respect to the Services.

(b) Implementation of Changes

- (i) In implementing any Change to the Services as permitted under this Agreement, whether such Change constitutes Additional Services, modification of existing Services, removal of existing Services, or implementation of changes to the Supplier’s performance of existing Services, the Parties shall comply with the provisions of this **Section 1.11 (Changes to Services)**:
- (ii) Absent extraordinary circumstances or some other actual limitation in the Supplier’s capability or capacity, the Supplier will make Changes to the Services as requested by VITA.
- (iii) All Changes must be implemented in accordance with the VITA Rules. In addition, in accordance with applicable Law, Changes constituting Additional Services must



be within the scope of the services, functions, responsibilities, activities, deliveries and tasks reasonably contemplated by the RFP.

- (iv) With respect to all Changes other than those Changes made on a temporary emergency basis to maintain the security or continuity of services, the Supplier will (1) schedule Changes so as not to interrupt the business operations of VITA and the other Customers, (2) prepare and deliver to VITA each month a rolling schedule for ongoing and planned Changes for the next three (3) consecutive month period, and (3) monitor and report to VITA the status of Changes that are in-progress against the applicable schedule.
- (v) With respect to any Change made on a temporary emergency basis to maintain the security or continuity of services, the Supplier will document and provide to VITA notification (which may be given orally, provided that any oral notice must be confirmed in writing to VITA within three (3) Business Days) of the Change and no later than the next Business Day after the Change is made.
- (vi) Without first obtaining VITA's written approval, which VITA may withhold in its sole discretion, the Supplier will not make or approve any change or modification in its performance of the Services or within the Managed Environment which may:
  - (1) have an adverse impact on the functionality, interoperability, performance, accuracy, speed, responsiveness, quality or resource efficiency of the Services or any other services or operations of VITA or the Customers;
  - (2) require a material change to, or have an adverse impact on VITA's or any Customer's operations, Environments, facilities, processes, Systems, Equipment, security or IT environment;
  - (3) increase the costs, fees (including from third parties) or financial risks to VITA or other Customers; or
  - (4) violate or be inconsistent with VITA Rules.

1.11.3 Charges Related to Changes. The following shall apply with respect to Charges for Changes pursuant to this **Section 1.11 (Changes to Services)**:

- (a) In its proposal for VITA's consideration, the Supplier will indicate whether the Supplier believes the requested Change constitutes Additional Services. If the Supplier believes the Change constitutes Additional Services, the Supplier will in all cases propose commercially reasonable efforts to implement the Change at no additional Charge to VITA. If the Change does not constitute Additional Services, or if the Supplier can nonetheless implement the Change at no additional Charges to VITA (a "No Cost Change"), then the Supplier will note in its proposal all other expected impacts of implementing the Change. If the Change does constitute Additional Services, or if implementation of the Change could result in additional one-time Charges, then the Supplier will work with VITA in good faith, to explore options that could, on a commercially reasonable basis, minimize or eliminate any resulting additional costs (e.g., by reprioritizing or substituting work);

- (b) All additional charges proposed by the Supplier for the Additional Services will be included in its proposal and shall be based on the then-current fees and rates in effect under this Agreement, to the extent possible, and otherwise using rates reflecting a no less favorable discount or rate as has been applied to the then-current Charges ("**Preferred Rates**"). The additional charges will reflect the net effect of the Change, to the extent resources and costs can be eliminated as a result of the Change. The Supplier will inform VITA of all other impacts associated with making the Change.

**1.12 Corrective Action and Other Remediation Plans.** The Supplier will comply with its obligations under any corrective action, remediation or similar plans that have been developed in accordance with the applicable terms of this Agreement (including the Service Management Manual or other documentation incorporated by reference herein), as if such obligations were part of this Agreement.

**1.13 Supplier Excused Performance.** The Supplier's failure to perform an obligation under this Agreement (including meeting the Service Levels) shall be excused if and to the extent such Supplier non-performance is caused by the failure of VITA (or other Customer) to timely perform expressly specified obligations under this Agreement, but only if (a) the Supplier expeditiously gives VITA notice of such failure to perform (which notice shall describe in reasonable detail the Supplier's inability to perform under such circumstances), (b) the Supplier provides VITA with every reasonable opportunity to correct such failure to perform and thereby avoid such Supplier non-performance, (c) the Supplier identifies and pursues all commercially reasonable means to avoid or mitigate the impact of such failure to perform, (d) the Supplier uses commercially reasonable efforts to perform notwithstanding such failure to perform, and (e) the Supplier conducts a root cause analysis and thereby demonstrates that such failure to perform is the cause of the Supplier's non-performance. The Supplier acknowledges and agrees that the circumstances described in this **Section 1.13 (Supplier Excused Performance)**, together with **Section 21.3 (Force Majeure)**, are the only circumstances in which its failure to perform its obligations under this Agreement shall be excused and that Supplier shall not assert any other act or omission of VITA or other Customer as excusing any such failure on Supplier's part. For the avoidance of doubt, failure of VITA or another customer to perform tasks, actions and responsibilities expressly assigned to it under this Agreement and upon which an obligation or responsibility of Supplier is dependent shall not be deemed a contractual breach for which remedy, other than the relief provided in this **Section 1.13 (Supplier Excused Performance)** is available.

## **2. PERFORMANCE**

**2.1 General Responsibility.** The Supplier is responsible for managing and successfully performing, completing, and delivering the Services, subject to the overall direction of VITA and with the cooperation and support of VITA as specified in this Agreement.

### **2.2 Place of Performance**

- 2.2.1 The Supplier may not provide particular Services from any given Supplier Facility unless such facility is expressly identified in **Exhibit 2 (Description of Services and Solution)** as a facility from which such particular Services may be provided. Similarly, Supplier Personnel may perform Services remotely (i.e., from outside a Supplier Facility or VITA Facility) only to the extent this Agreement expressly permits the particular form of remote work for the particular Services.
- 2.2.2 The Supplier may not change the location from where any given Services are performed without VITA's prior written consent. The Supplier will reimburse VITA for any incremental expense incurred by VITA (whether one-time or ongoing) due to a Supplier-initiated, VITA-approved relocation of Services from a Supplier Facility.
- 2.2.3 VITA Requests for Relocations



- (a) If (i) VITA reasonably requests the Supplier to relocate any Services from one Supplier Facility to another Supplier Facility based on a change in security risks, business continuity risks, tax risks, or safety risks; the Supplier's ability to attract and retain personnel resources; an increased cost to VITA; or for another concern of similar significance; and (ii) the Supplier has the capacity to perform the Services at the requested Supplier Facility (or can reasonably configure such Supplier Facility to have such capacity), then the Supplier will so relocate such Services at no cost to VITA. In such a case, the Supplier will make all commercially reasonable efforts to relocate the Services within a timeframe reasonably requested by VITA, and in no event will such relocation exceed thirty (30) days from the Supplier's receipt of request from VITA.
- (b) For any other request by VITA to change the Supplier Facility from where any Services are provided, the Supplier will work in good faith and make commercially reasonable efforts to accommodate such request, subject to the Change Control Procedures.
- (c) For clarity, this **Section 2.2.3 (VITA Requests for Relocations)** in no way limits or supersedes the Supplier's Disaster Recovery and Business Continuity obligations, referenced in **Section 1.10 (Disaster Recovery and Business Continuity)** above.

## 2.3 Time of Performance

- 2.3.1 The Supplier will provide the resources necessary to complete, and will complete, the Services in accordance with any applicable time schedules set forth in this Agreement.
- 2.3.2 The Supplier will promptly notify VITA upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion (or delivery) of any Service. The Supplier will use commercially reasonable efforts to avoid or minimize any delays in performance and will promptly inform VITA of the steps the Supplier is taking or will take to do so, and the projected actual completion (or delivery) time.

**2.4 Manner of Performance.** The Supplier will perform the Services in compliance with this Agreement, and, in cases where this Agreement does not prescribe or otherwise regulate the manner of the Supplier's performance of the Services, in accordance with best industry practices followed by the leading suppliers of similar services.

**2.5 Quality Assurance and Continuous Improvement.** In performing the Services, the Supplier will follow commercially reasonable quality assurance procedures designed to ensure that the Services are performed with a high degree of professional quality and reliability. Such procedures will include checkpoint reviews, testing, acceptance, and other procedures for VITA to continuously confirm the quality of the Supplier's performance. The Supplier, as part of its total quality management process, will provide continuous quality assurance and quality improvement through: (a) the identification and application of proven techniques and tools from other installations within its operations; and (b) the implementation of concrete programs, practices and measures designed to improve performance (including the Service Levels).

## 3. SERVICE LEVELS

**3.1 Service Levels and Other Performance Standards.** Beginning on the Commencement Date (or, if later, the date specified in **Exhibit 3 (Reporting and Service Level Management)**), the Supplier's level of performance will be equal to or exceed the performance standards designated as "Service Levels" in **Exhibit 3 (Reporting and Service Level Management)** (the "***Service Levels***"). For matters not covered by the Service Levels, Supplier shall perform the Services at levels of accuracy, quality, completeness, timeliness, responsiveness and resource efficiency that are at least equal to the documented or otherwise verifiable levels received by the Customers

during the twelve (12) months prior to the Commencement Date and at levels that are equal to or higher than the accepted industry standards of leading suppliers of similar services.

For the avoidance of doubt, if Supplier breaches its performance obligations under this Agreement, the fact that such breach did not cause Supplier to miss the applicable Service Level shall not relieve Supplier of responsibility for such breach or any resulting damages.

### **3.2 Service Level Credits and Deliverable Credits**

- 3.2.1 Supplier recognizes that VITA is paying the Supplier to deliver certain Services at specified Service Levels. If Supplier fails to meet any Service Level, then, in addition to other remedies available to VITA, Supplier shall pay or credit to VITA the Service Level Credits to the extent provided in **Exhibit 3 (Reporting and Service Level Management)**, in recognition of the diminished value of the Services resulting from Supplier's failure to meet the agreed upon level of performance, and not as a penalty.
- 3.2.2 Supplier further recognizes that the Charges are for the Services including completion of certain Deliverables, including Implementation Milestones, by the time and in the manner set forth in this Agreement. If Supplier fails to meet its obligations with respect to Deliverables that are designated as Critical Deliverables, in addition to other remedies available to VITA, Supplier shall pay or credit to VITA the Deliverable Credits to the extent provided in **Exhibit 3 (Reporting and Service Level Management)** or established as part of a Project Plan or other action plan approval process on a case-by-case basis in recognition of the diminished value of the Services resulting from Supplier's failure to meet the agreed-upon level of performance, and not as a penalty.
- 3.2.3 VITA and the Supplier agree that, under no circumstances shall the imposition of Service Level Credits or Deliverable Credits be construed as VITA's sole or exclusive remedy for any failure to meet the Service Levels or Critical Deliverables to which they relate, and do not preclude additional remedies by VITA for damages related to such failures; provided, however, if VITA recovers monetary damages from Supplier as a result of Supplier's failure to meet a Service Level or Critical Deliverable, Supplier shall be entitled to set-off against such damages any Service Level Credits or Deliverable Credits paid for the failure(s) giving rise to such recovery.

**3.3 Measuring and Reporting Service Levels.** The Supplier will implement and utilize the necessary measurement and monitoring tools and procedures required to measure and report the Supplier's performance of the Services against the applicable Service Levels, at no cost to VITA. Such measurement and monitoring will permit reporting at a level of detail sufficient to verify compliance with the Service Levels, and will be subject to audit by VITA. The Supplier will provide VITA with information and access to such tools and procedures upon request, for purposes of verification. In addition, the Supplier will make available to VITA any data in the Supplier's possession regarding measurements taken by the Supplier with respect to any Service Levels.

## **4. CHARGES**

### **4.1 Charges, Generally**

- 4.1.1 The Charges, as set forth in **Exhibit 4 (Pricing and Financial Provisions)**, will fully compensate the Supplier for providing the Services. VITA will not be required to pay the Supplier any amounts for or in connection with performing the Services and fulfilling the Supplier's obligations under this Agreement other than those amounts expressly payable to the Supplier under this Agreement. Except to the extent otherwise expressly set forth in this Agreement, (a) the Supplier will be responsible for all costs that it or any Supplier Personnel may incur in connection with this Agreement, including for facilities, assets, services, taxes and fees imposed on the Supplier or its

employees, infrastructure and other items; and (b) the Supplier may not separately charge and will not be reimbursed for any overhead, or for any tools or other aids used by Supplier Personnel in order to perform Services.

- 4.1.2 In no event will information or changes in circumstances discovered after the Effective Date serve as the basis for the Supplier to adjust its Charges or other terms.

## 4.2 Expenses

- 4.2.1 The Supplier acknowledges that, except as may be otherwise expressly provided in this Agreement, all expenses that the Supplier incurs in performing the Services are included in the Supplier's Charges and rates provided in this Agreement. Accordingly, such Supplier expenses are not separately reimbursable by VITA. **Exhibit 4 (Pricing and Financial Provisions)** provides the circumstances under which Pass-Through Expenses may be reimbursable by VITA to the Supplier.
- 4.2.2 The Supplier will use commercially reasonable efforts to minimize the amount of expenses for which VITA is responsible. With respect to services or materials paid for on a Pass-Through Expenses basis, VITA reserves the right to: (a) obtain such services or materials directly from a third party; (b) designate the third party source for such services or materials; (c) designate the particular services or materials (e.g., equipment make and model) the Supplier will obtain;; (d) designate the terms for obtaining such services or materials (e.g., purchase or lease and lump sum payment or payment over time); (e) require the Supplier to identify and consider multiple sources for such services or materials; and (f) review and approve in advance all Pass-Through Expenses.

## 4.3 Taxes

- 4.3.1 Generally. Pursuant to Commonwealth Law, VITA and the other Customers, as Public Bodies, are exempt from the assessment of Commonwealth taxes on any property or services acquired under Commonwealth jurisdiction, including sales and use. In addition, VITA and the other Customers are exempt from federal taxes pursuant to 26 United States Code, Sections 4253(i) and (j). VITA makes no representation whatsoever as to the liability or exemption from liability of the Supplier to any tax imposed by any Governmental Authority and all local, state, federal and other taxes associated with the Services and their performance by Supplier are the Supplier's responsibility.
- 4.3.2 Tax Filings. The Supplier represents, warrants and covenants that it will file appropriate tax returns, and pay applicable taxes owed arising from or related to the provision of the Services in all applicable jurisdictions.

## 4.4 Invoices. The following, along with the provisions of **Exhibit 4 (Pricing and Financial Provisions)**, govern the invoicing process:

- 4.4.1 The Supplier will submit invoices to VITA on a monthly basis in arrears, detailing the amounts payable by VITA under this Agreement. There is expected to be a single corresponding invoice per pay period (e.g., monthly), unless VITA instructs Supplier otherwise.
- 4.4.2 Supplier is responsible for the accuracy of its billing information. VITA will remit payment to the Supplier within thirty (30) days following VITA's receipt of a proper and valid invoice submitted to VITA pursuant to this Agreement; provided that VITA may:
- (a) withhold payment of any amounts that are disputed by VITA in good faith pending resolution of the dispute; and

- (b) in the event that VITA withholds any disputed amount, then VITA and the Supplier will promptly seek to resolve the dispute over the withheld amount by mutual discussion, subject to the dispute resolution procedures described in this Agreement.

- 4.4.3 For clarity, nothing herein prevents VITA from later disputing any previously paid amount. In no event will VITA be liable to the Supplier for any interest or other late fees on any past due amounts (whether disputed or otherwise).
- 4.4.4 The Supplier agrees to provide VITA with documentation and other information with respect to each invoice as may be reasonably requested by VITA to verify accuracy and compliance with the provisions of this Agreement.
- 4.4.5 Supplier agrees not to issue invoices hereunder until after the Services and Supplier's performance obligations, including Milestone Deliverables, have been performed and Accepted. Charges for Deliverables, components or Services delivered or Accepted more than ninety (90) days prior to receipt of a valid invoice may not be paid and the Supplier shall not invoice VITA, and VITA will not be obligated to pay, for any charges that have not been properly invoiced within such period.

**4.5 Proration.** Charges under this Agreement that are to be computed on a monthly (or other periodic) basis will be prorated for any partial month (or other period).

**4.6 Prepaid Amounts and Refundable Items.** Where VITA has prepaid for a service or function for which the Supplier is assuming financial responsibility under this Agreement, the Supplier will refund to VITA, upon VITA's request, that portion of such prepaid expense which is attributable to month(s) of and after the Supplier's assumption of such responsibility. Further, if the Supplier should receive a refund, credit or other rebate for goods or services previously paid for by VITA, the Supplier will promptly notify VITA of such refund, credit or rebate and will promptly pay the full amount of such refund, credit or rebate, as the case may be, to VITA.

**4.7 Repeated Over-billing.** Should Supplier repeatedly over-bill VITA, VITA may assess a one percent (1%) charge for the amount over-billed for each month that such over-billing continues.

## **5. SUPPLIER PERSONNEL**

### **5.1 Responsibility for Supplier Personnel, Generally**

- 5.1.1 No officer, director, employee, agent, Affiliate, contractor or subcontractor retained by Supplier to perform work on VITA's or any other Customer's behalf hereunder shall be deemed to be an officer, director, employee, agent, Affiliate, contractor or subcontractor of VITA or other Customer for any purpose. Neither VITA nor the other Customers has the right, power, authority or duty to supervise or direct the activities of the Supplier Personnel or to compensate Supplier Personnel for any work performed by them pursuant to this Agreement. Supplier, and not the Eligible Recipients, shall be responsible and liable for the acts and omissions of Supplier Personnel. The Supplier will manage, supervise and provide direction to Supplier Personnel and cause them to comply with the obligations and restrictions applicable to the Supplier under this Agreement. The Supplier will make Supplier Personnel aware of, and cause them to comply with, VITA Rules, including safety and security policies applicable while performing Services at VITA Facilities or accessing VITA Data or VITA's Systems. The Supplier, and neither VITA nor any other Customer,

is responsible for all of the acts and omissions of Supplier Personnel, as if such acts are performed by the Supplier.

#### 5.1.2 Employment Laws, Work Authorizations, and Tax Residence.

- (a) The Supplier will be solely responsible for maintaining compliance with all applicable employment, immigration, working conditions, wage, benefits (including health care), tax and similar Laws, policies and procedures with respect to Supplier Personnel (including for any cost relating to visa processing or application fees).
- (b) As requested, the Supplier will provide VITA with written evidence of work authorization for any or all personnel assigned to VITA and demonstrate its compliance with applicable immigration Laws, and bear all expenses. In the United States, applicable immigration Laws include, but are not limited to, as amended, the Immigration and Reform Act of 1986, the Immigration and Nationality Act of 1947, the L-1 Visa (Intra-company Transferee) Reform Act of 2004 and the H-1B Visa Reform Act of 2004 (in each case, as may be amended). To the extent applicable, the Supplier must ensure that it maintains a sufficient number of visa-ready individuals to perform the Services.

**5.2 Qualifications and Training.** The Supplier Personnel assigned to perform the Services will have appropriate skills, experience and training to enable them to perform such Services in a professional and workmanlike manner, consistent with generally accepted industry standards. Throughout the Term, the Supplier will establish and maintain policies, procedures and training programs reasonably designed to assist Supplier Personnel in complying with the Supplier's duties and obligations under this Agreement.

**5.3 Screening and Background Checks.** The Supplier at its sole cost and expense, will conduct background checks (including national fingerprint record checks and drug testing), criminal history investigations and related screening on all employees, contractors and subcontractors proposed to be assigned to perform Services prior to such assignment in accordance with the Supplier's applicable policies and procedures and subject to VITA Rules; provided that, VITA or any other particular Customer may elect to conduct such background checks (including national fingerprint record checks) themselves in lieu of the Supplier, in which case the Supplier will reimburse VITA or the applicable Customer for the costs incurred in performing such background checks. Any background checks conducted by the Supplier must be no less stringent than and must comply with the background checks and related screening requirements set forth in VITA Rules (or as otherwise required by VITA and the applicable Customer, as communicated to the Supplier) for which the Services will be performed, as such standards are in effect as of the Effective Date, subject to any changes thereto during the Term. On a regular basis, the Parties will review changes in the background check criteria. The Supplier will not engage any employee, contractor or subcontractor in the performance of Services if the results of such person's background check and screening do not meet the criteria acceptable to VITA and the requirements of the applicable Customer as set forth in VITA Rules (or as otherwise required by VITA or the applicable Customer and communicated to the Supplier). All the Supplier employees, contractors and subcontractors (regardless of whether such persons were Transitioned Personnel) assigned to perform the Services will be subject to background checks meeting the qualifications of this **Section 5.3 (Screening and Background Checks)** and any other requirements (e.g., location-specific requirements or Customer-specific requirements) provided in any VITA Rules, at any time throughout the Term. The Supplier will immediately remove from the VITA account any Supplier employee, contractor or subcontractor whose background check results do not meet the requirements of VITA or the other applicable Customers.

#### 5.4 Removal and Replacement of Supplier Personnel

- 5.4.1 VITA or other applicable Customer may immediately remove any Supplier Personnel from any VITA Facilities, as deemed appropriate, including if the person is threatening or abusive, commits

a crime, engages in an act of dishonesty while performing Services or violates VITA's Rules pertaining to safety, security or use of VITA Facilities or the data privacy and protection obligations under this Agreement.

- 5.4.2 VITA may require the Supplier to remove any individual Supplier Personnel from the performance of Services if VITA reasonably determines that the individual is not suitable to perform the Services. Any such removal will be performed immediately following request from VITA; provided that, where practicable, VITA will attempt to discuss the issue with the Supplier prior to making such request. The Supplier will, unless VITA requests otherwise, assign a replacement resource to the Services as soon as practicable.
- 5.4.3 In the event that the Supplier replaces any Supplier Personnel performing Services under this Agreement with another person (whether at the request of VITA, or otherwise), at VITA's option, the Supplier will provide an overlap period where both Supplier Personnel (i.e., the person to be removed as well as the incoming person) will be assigned to provide the relevant Services. During such overlap period, there will be no additional Charges for the "extra" resource.
- 5.4.4 Removals or replacements of Supplier Personnel under this **Section 5.4 (Removal and Replacement of Supplier Personnel)** (or otherwise in accordance with this Agreement) do not excuse the Supplier from its obligations under this Agreement.

**5.5 Subcontracting.** The Supplier may subcontract or delegate the performance of Services only in accordance with the following:

- 5.5.1 The Supplier will not subcontract (or permit further subcontracting) for performance of, or delegate any of its responsibilities under this Agreement to another party, including an Affiliate of the Supplier, without first obtaining the prior written approval of VITA.
- 5.5.2 When seeking VITA's approval for a Subcontractor, the Supplier will (a) give VITA reasonable prior written notice specifying the components of the Services affected, the scope of the proposed subcontract, the identity and qualifications of the proposed Subcontractor and the results of any due diligence carried out with regard to the proposed Subcontractor; and (b) at VITA's request, provide VITA a description of the scope and material terms (other than financial) of the proposed subcontract. VITA may approve or reject proposed Subcontractors in its discretion. VITA may require the Supplier to replace any previously approved Subcontractor found, in the reasonable judgment of VITA, to be unacceptable, including if the Subcontractor fails to satisfy the Supplier's obligations under this Agreement.
- 5.5.3 The Supplier may use Subcontractors to perform the Services to the extent permitted by VITA's approval. The Supplier is responsible for managing all Subcontractors. The Supplier remains responsible for all Functions delegated to Subcontractors to the same extent as if such Functions were to be performed by the Supplier acting through its officers, directors, employees, and agents and, for purposes of this Agreement, such Functions will be deemed Functions performed by the Supplier. In no event will the Supplier be relieved of its obligations under this Agreement as a result of its use of any Subcontractors. The Supplier will be VITA's sole point of contact regarding the Services, including with respect to payment.
- 5.5.4 If this Agreement and the Services provided by Supplier are supported in whole or in part with federal funds, Supplier shall not subcontract to any subcontractor that is a party excluded from Federal Procurement and Nonprocurement Programs.



- 5.5.5 In no event shall Supplier subcontract to any subcontractor which is debarred by the Commonwealth of Virginia or which owes back taxes to the Commonwealth and has not made arrangements with the Commonwealth for payment of such back taxes.
- 5.5.6 It is the policy of the Commonwealth that small businesses and micro businesses, including those owned by women, minorities or disabled veterans, will have a fair and equal opportunity to participate in the Commonwealth purchasing process. Therefore, the Commonwealth encourages the Supplier to subcontract portions of the Services under this Agreement to such businesses.
- 5.5.7 The Supplier will use commercially reasonable efforts to identify and prevent a potential subcontractor Organizational Conflict of Interest and will inform VITA of any activity or relationship that the Supplier has reason to believe may create an Organizational Conflict of Interest.

**5.6 Identification of Supplier Personnel.** Except as specifically authorized by VITA, each of the Supplier Personnel will clearly identify themselves as such and not as employees of the Commonwealth, VITA or any other Customer. This will include any and all communications, whether oral, written or electronic, unless and to the extent authorized by VITA in connection with the performance of specific Services. Each of the Supplier Personnel will wear a badge issued by VITA or the relevant Customer when at a facility of VITA or any other Customer. Badges worn by Supplier Personnel will identify each such individual as Supplier's employees, agents or subcontractors.

**5.7 Key Personnel.**

- 5.7.1 Certain Supplier Personnel positions shall be designated as "Key Personnel" positions, to be filled by approved Supplier Personnel in accordance with this section (each, a "Key Personnel"). As of the Effective Date, the Key Personnel positions are set forth in Exhibit 5.1 (Key Personnel). Subject to the total number of Key Personnel positions not exceeding 20, VITA may, in its sole discretion, change the particular Supplier Personnel positions that are designated as Key Personnel from time to time. With the Supplier's approval, which shall not be unreasonably withheld, VITA may increase the number of Supplier Personnel positions designated as Key Personnel.
- 5.7.2 The Key Personnel approved by VITA as of the Effective Date to fill the designated Key Personnel positions are listed in Exhibit 5.1 (Key Personnel). Supplier shall identify and obtain VITA's approval of Supplier Personnel to fill any unfilled Key Personnel positions prior to the initiation of Implementation Services, unless otherwise specified in Exhibit 5.1 (Key Personnel).
- 5.7.3 Supplier will cause each of the Supplier Personnel filling each Key Personnel position (whether as of the Effective Date, or during the Term, including replacement Key Personnel) to be full-time dedicated to the provision of the Services, unless Exhibit 5.1 (Key Personnel) expressly states otherwise with respect to the particular Key Personnel position. Further, Supplier shall not transfer, reassign or remove any Supplier Personnel from his or her Key Personnel position (or deliver or announce its intention or desire to do so) without VITA's prior written approval, until the shorter of (a) the Services for which such person has been assigned or other activities for which such person is responsible have been completed or terminated, and (b) twenty-four (24) months (or shorter period designated for such Key Personnel position in Exhibit 5.1 (Key Personnel)) have passed since such Supplier Personnel's assignment to such Key Personnel position began, excepting for cases of death, disability, leave, resignation or involuntary termination of employment for cause. VITA may withhold any such approval in its reasonable discretion based on its own self-interest.

- 5.7.4 For each Key Personnel position, the Supplier will implement and maintain (a) a retention strategy designed to retain the Supplier Personnel in such Key Personnel position for the prescribed period, and (b) a current and active succession plan. The Supplier will share such retention strategy(s) and succession plan(s) with VITA upon request.
- 5.7.5 In connection with any change in Key Personnel, the Supplier will:
- (a) give VITA, where possible at least sixty (60) days advance notice of a proposed change in Supplier Personnel filling a Key Personnel position (and where sixty (60) days is not possible, as much advance notice as is possible), and will discuss with VITA any objections or specific objectives VITA may have;
  - (b) expeditiously identify and obtain VITA's approval of a suitable replacement; and
  - (c) arrange (unless the circumstance of such change prevents) for the proposed replacement Key Personnel to work side-by-side with the incumbent Key Personnel during the notice period to effect a seamless transfer of knowledge prior to the incumbent leaving the Key Personnel position.
- 5.7.6 In all events (including following the minimum period applicable to Key Personnel positions), the Supplier shall not transfer, remove or re-assign:
- (a) any Supplier Personnel from a Key Personnel position unless and until the Supplier has (1) given VITA reasonable prior notice of such transfer, reassignment or removal, (2) a suitable replacement has been identified by Supplier and approved by VITA at least thirty (30) days prior to the effective date of such transfer, reassignment or removal, (3) demonstrated to VITA's reasonable satisfaction that, such removal, re-assignment or transfer will not have an adverse impact on delivery of the Services or VITA's operations, and (4) completed any and all necessary knowledge transfer between the departing Key Personnel and the VITA-approved replacement; or
  - (b) more than ten percent (10%) of the Supplier Personnel serving in Key Personnel positions from such Key Personnel positions in any six (6) month period.
- 5.7.7 Before assigning a Supplier Personnel as a Key Personnel, whether as an initial or subsequent assignment, the Supplier will notify VITA of the proposed assignment, introduce the individual to appropriate VITA representatives and, consistent with the Supplier's personnel practices, provide VITA a curriculum vitae and other information about the individual and his or her background and experience as reasonably requested by VITA. Upon request, the Supplier will provide VITA representatives an opportunity to meet with the proposed Key Personnel. If VITA in good faith objects to the proposed assignment, the Parties will attempt to resolve VITA's concerns on a mutually agreeable basis. If the Parties are not able to resolve VITA's concerns within ten (10) Business Days, or as otherwise agreed, the Supplier shall not assign such individual to that position and shall propose another Supplier Personnel of suitable ability and qualification, in accordance with the foregoing.
- 5.7.8 For the purpose of the Supplier's performance management and compensation of Key Personnel, the Supplier will, at VITA request, hold an annual joint session with VITA to review account goals and objectives as well as to receive feedback relative to the past year's performance.

## **5.8 Account Executive and Manager**



- 5.8.1 The Supplier will maintain an account executive who will be dedicated full-time to VITA's account and who will serve as a single point of contact with authority over, and accountability for, the overall executive management and oversight of the VITA account (the "Account Executive"). The Account Executive will be deemed a "Key Personnel" and such position shall conform to the Key Personnel provisions set forth in Section 2.0 above, including length of assignment. The Account Executive (a) will be acceptable to VITA, in VITA's sole discretion, (b) will meet regularly with the Executive Director, Platform Relationship Office (PRO) of VITA or other VITA designee at designated VITA Facility, and (c) will have the power and authority to make decisions with respect to actions to be taken by the Supplier in the executive management and oversight of the VITA account.
- 5.8.2 The Supplier will maintain an account manager who will be dedicated full-time to VITA's account and who will serve as a single point of contact with authority over, and accountability for, the Services delivery responsibilities and actions taken or to be taken by the Supplier under this Agreement (the "Account Manager"). The Account Manager will be deemed a "Key Personnel" and such position shall conform to the Key Personnel provisions set forth in Section 2.0 above, including length of assignment. The Account Manager (a) will be acceptable to VITA, in VITA's sole discretion, (b) will be the primary point of accountability for the Supplier in dealing with Services delivery under this Agreement, except in cases where the Parties agree that other Supplier Personnel will act as points of contact with VITA with respect to specifically identified subject matter or areas, (c) will have overall responsibility for managing and coordinating the delivery of the Services, including for customer satisfaction and Service Level attainment, (d) will meet regularly with the VITA representatives designated by VITA from time to time at designated VITA Facility(ies), and (e) will have the power and authority to make decisions with respect to actions to be taken by Supplier in the ordinary course of day-to-day performance of the Services and management of VITA's account in accordance with this Agreement.

## 5.9 Personnel Projection Matrix

- 5.9.1 Exhibit 5.2 (Personnel Projection Matrix) contains a matrix setting forth the Supplier's projection of Supplier Personnel for the performance of the Services (the "Personnel Projection Matrix"). The Supplier will staff Supplier Personnel in a manner consistent with the Personnel Projection Matrix, and the Supplier's staffing for the performance of Services will not be materially changed from the Personnel Projection Matrix without VITA's prior approval. VITA may withhold such approval, among other reasons, if it has good faith concern that such changes could have an adverse impact on the Supplier's ability to perform its obligations under the Agreement. Without limiting other changes that may rise to the level of being material, any of the following will be deemed to materially change the Supplier's staffing for purposes of the foregoing:
- (a) at any time prior to the first anniversary of the Commencement Date, the number of Supplier Personnel is five percent (5%) or more below the counts provided (as of the Effective Date, subject to adjustment pursuant to Section 4.0(2) below) for such period in any of the "Grand Totals" in the Personnel Projection Matrix for (i) the combined "Current Employees," and "Current Contractors" categories, (B) the "Supplier FTPs – Service Delivery" category, and (C) the "Supplier FTPs – Transition/Transformation" category;
  - (b) at any time during the second or third twelve (12) month periods following the Commencement Date, the number of Supplier Personnel is ten percent (10%) or more below the counts provided (as of the Effective Date, subject to adjustment pursuant to Section 5.9.2 below) for the applicable period in any of such Grand Totals described in clause (a) immediately above; or

- (c) after the period ending thirty-six (36) months following the Commencement Date, the number of Supplier Personnel is fifteen percent (15%) or more below the annual totals reflected (as of the Effective Date, subject to adjustment pursuant to Section 5.9.2 below) for such period in any of such Grand Totals described in clause (a) above.

- 5.9.2 The Supplier will provide to VITA, on a quarterly basis, an updated Personnel Projection Matrix reflecting then-current counts as well as the future counts, together with all original counts as of the Effective Date, subject to adjustment in accordance with the following. The Supplier shall adjust the numbers in the Personnel Projection Matrix to account for any material and sustained increase or decrease in the required level of Services above or below the Resource Baselines as of the Effective Date (including Additional Services). The Supplier will provide its rationale for the calculation of such adjustments to VITA, which adjustments will be subject to the review and approval of VITA.
- 5.9.3 During the first twelve (12) months following the Commencement Date any changes, material or otherwise, to the deployment of Supplier Personnel will be reported by Supplier to VITA within five (5) days following the end of each month in which such changes occurred, and after such twelve (12) month period, Supplier will report all material changes in the number of Supplier Personnel within the tenth (10th) Business Day following the end of each month in which such changes occurred.
- 5.9.4 For the period ending twenty-four (24) months following the Commencement Date, Supplier will provide VITA with a report by the tenth (10th) Business Day following the end of each month identifying the Supplier Personnel who were terminated for cause or performance during that month or who otherwise left Supplier's employment during that month.
- 5.9.5 Notwithstanding the foregoing, Supplier will provide VITA with an updated Personnel Projection Matrix six (6) months following the Commencement Date and semi-annually thereafter.

**5.10 Location of Supplier Personnel.** Without limiting other Supplier Obligations under this Agreement, including with respect to use and location of Supplier Facilities, Supplier Personnel must perform the Services within the United States and must be legally allowed to work in the United States.

#### **5.11 Turnover Rate**

- 5.11.1 The Supplier will measure and report to VITA the turnover rate of Supplier Personnel. The Supplier shall:
  - a) Use commercially reasonable efforts to keep the turnover rate of Supplier Personnel to a level comparable to or better than the industry average for large, well-managed suppliers performing services similar to the Services, and in no event higher than fifteen percent (15%), as measured on a rolling twelve (12) month basis.
  - b) Provide VITA with a written report of the turnover (i) on a monthly basis until the end of the first twelve (12) months following the Commencement Date, (ii) on a quarterly basis during the following twelve (12) month period, and (iii) on an annual basis for the remainder of the Term, provided that:
    - i) VITA may require the Supplier to continue providing a monthly or quarterly written report of the turnover, if VITA determines that a more frequent review is warranted;

- ii) if the turnover rate of Supplier Personnel exceeds the levels described above, or if VITA believes that the turnover rate is at a level that presents operational or other risks to VITA or other Customers, and so notifies the Supplier, the Supplier shall:
  - 1) provide VITA with data concerning Supplier's turnover rate (including for Supplier Personnel) within ten (10) Business Days after VITA's request,
  - 2) promptly thereafter meet with VITA to discuss the turnover rate(s) and issues associated with it, and
  - 3) to the extent that such turnover poses an operational risk to VITA (as determined by VITA in its discretion), within ten (10) Business Days after such meeting submit a written proposal to VITA for reducing the turnover rate of Supplier Personnel for VITA's review and approval, and thereafter implement and complete the agreed upon program for reducing the turnover rate.

## 6. TERM

**6.1 Term.** This Agreement is effective and legally binding as of the Effective Date and shall continue to be effective and legally binding through November 30, 2023 subject to this Agreement being terminated earlier or extended pursuant to its terms (the "**Term**").

**6.2 Renewal Terms.** VITA will have the option to extend the initial Term of this Agreement for periods of up to two (2) years on the terms, conditions and pricing then in effect (each a "**Renewal**"). VITA will have two (2) such Renewal options (and may renew this Agreement in whole or in part under each Renewal). VITA may exercise a Renewal option by providing written notice to the Supplier no later than thirty (30) days prior to the then-current Term expiration date.

## 7. USE OF VITA RESOURCES.

This **Section 7 (Use of VITA Resources)** sets forth the terms under which certain resources used by VITA prior to the Effective Date will be transferred or otherwise made available to the Supplier for use in providing the Services. RIGHTS OF USE GRANTED BY VITA TO SUPPLIER UNDER THIS **SECTION 7 (USE OF VITA RESOURCES)** ARE GRANTED ON AN "AS IS, WHERE IS" BASIS, WITHOUT WARRANTIES OF ANY KIND.

### 7.1 VITA Owned and Leased Equipment.

- 7.1.1 To the extent required elsewhere in this Agreement or otherwise upon VITA's request, the Supplier will use VITA Owned Equipment and VITA Leased Equipment to perform the Services. Such Equipment will be used solely as necessary to perform the Services.
- 7.1.2 For VITA Owned Equipment, VITA grants to the Supplier, without sale, the right to use the VITA Owned Equipment, if any, during the Term during its remaining useful life until, for each item of Equipment, it is no longer required for the performance of the Services.
- 7.1.3 For VITA Leased Equipment, VITA grants to the Supplier, without assignment of the lease but subject to the Parties obtaining any Required Consents pursuant to **Section 7.6 (Required Consents)**, the right to use the VITA Leased Equipment, if any, during the Term (or the applicable lease term, if shorter) solely as necessary to perform the Services. Such equipment will be made available until the earlier of (a) the point at which it is no longer required for the performance of the Services, or (b) the end of the applicable lease term. The Supplier will comply with the terms

and conditions imposed on VITA by the leases for such equipment that have been disclosed to the Supplier.

- 7.1.4 Notwithstanding the foregoing, to the extent expressly set forth in **Exhibit 4 (Pricing and Financial Provisions)**, but subject to the Parties obtaining any Required Consents pursuant to **Section 7.6 (Required Consents)**, the leases for certain Equipment may be assigned to the Supplier. The Supplier will assume and agree to perform all obligations under such assigned leases arising on or after the effective date of such assignment. Such assignment will not include any assignment or transfer by VITA or the other Customers of any Intellectual Property Rights created or acquired under such leases prior to the date of such assignment. VITA (or the applicable Customer) and the Supplier will execute and deliver mutually satisfactory assignment and assumption agreements with respect to the assigned leases. The Supplier will obtain for the benefit of VITA and the other Customers a release of any of its and their obligations under the assigned leases, and the Supplier will comply with the terms of any such assigned lease.

**7.2 VITA Third Party Contracts.** Subject to the Parties obtaining any Required Consents pursuant to **Section 7.6 (Required Consents)**:

- 7.2.1 VITA grants to the Supplier, without assignment of such contract, the right to use the services provided to VITA under the VITA Third Party Contracts, if any, during the Term solely as necessary to perform the Services. The Supplier will comply with the terms and conditions applicable to VITA under the VITA Third Party Contracts that have been disclosed to the Supplier. When a VITA Third Party Contract is no longer required for performance of the Services, or (if sooner) at the end of the applicable contract term, the Supplier will cease use of such VITA Third Party Contract.
- 7.2.2 Notwithstanding the foregoing, to the extent expressly set forth in **Exhibit 4 (Pricing and Financial Provisions)**, certain Third Party contracts may be assigned to the Supplier. The Supplier will assume and agree to perform all obligations under such assigned contracts arising on or after the effective date of such assignment. Such assignment will not include any assignment or transfer by VITA or the other Customers of any Intellectual Property Rights created or acquired under such contracts prior to the date of such assignment. VITA (or the applicable Customer) and the Supplier will execute and deliver mutually satisfactory assignment and assumption agreements with respect to the assigned Third Party contracts. The Supplier will obtain for the benefit of VITA and the other Customers a release of any of its and their obligations under the assigned contracts, and the Supplier will comply with the terms of any such assigned lease.

**7.3 VITA Owned Software.** VITA (and each of the other Customers) retains all of its right, title and interest in and to the VITA Owned Software. The Supplier is permitted to use the VITA Owned Software in accordance with the license granted in **Section Error! Reference source not found. (Work Product)**. When VITA Owned Software is no longer required for performance of the Services, the Supplier will promptly return such software to VITA in an agreed format or, at VITA's election, destroy it and certify the destruction of all copies in the Supplier's (or any of its Subcontractor's) possession or control.

**7.4 VITA Licensed Software.** Subject to the Parties having obtained any Required Consents pursuant to **Section 7.6 (Required Consents)**:

- 7.4.1 As of the Effective Date, VITA grants to the Supplier, without assignment of the license, such rights during the Term (or the applicable license term, if shorter) as VITA has (or later obtains) to use the VITA Licensed Software, if any, but only as necessary to perform the Services. The Supplier will comply with the terms and conditions imposed on VITA by the license for such software that have been disclosed to the Supplier. When VITA Licensed Software is no longer required for

performance of the Services, the Supplier will return such software to VITA in an agreed format or, at VITA's election, destroy it and certify the destruction of all copies in the Supplier's (or any of its Subcontractor's) possession or control.

- 7.4.2 Notwithstanding the foregoing, to the extent expressly set forth in **Exhibit 4 (Pricing and Financial Provisions)**, certain Software licenses and maintenance agreements may be assigned to the Supplier. The Supplier will assume and agree to perform all obligations under such assigned licenses arising on or after the effective date of such assignment. Such assignment will not include any assignment or transfer by VITA or the other Customers to the Supplier of any Intellectual Property Rights created or acquired under such contracts prior to the date of such assignment. VITA (or the applicable Customer) and the Supplier will execute and deliver mutually satisfactory assignment and assumption agreements with respect to the assigned Software licenses. The Supplier will obtain for the benefit of VITA and the other Customers a release of any of its and their obligations under the assigned licenses and agreements, and the Supplier will comply with the terms of any such assigned license or agreement.

## **7.5 Terms Applicable to VITA Facilities**

- 7.5.1 Except as expressly provided otherwise in this Agreement, the Supplier is responsible for providing the facilities and facilities-related support it needs to provide the Services.
- 7.5.2 To the extent the Supplier utilizes VITA Facilities to provide the Services, the Supplier's use of the VITA Facilities will be for the sole and exclusive purpose of providing the Services and will be subject to the terms set forth in this **Section 7.5 (Terms Applicable to VITA Facilities)**.
- 7.5.3 For Supplier Personnel working on-site at VITA Facilities, VITA will provide commercially standard workspace for each individual to perform work, as well as access to any required office equipment (printer, copier, etc.). The Supplier will be responsible for addressing, in its discretion and at its cost, any requests by such on-site Supplier Personnel for additional workplace accommodations (e.g., to their workspaces or otherwise at VITA Facilities), which accommodations will be appropriately discussed and coordinated with VITA or other Customer, as applicable.
- 7.5.4 The Supplier will use the VITA Facilities in an efficient manner and in a manner that does not interfere with VITA's business operations. The Supplier will keep the VITA Facilities in good order, not commit or permit waste or damage to them or use them for any unlawful purpose or act or any purpose other than the provision of the Services. The Supplier will comply with VITA's standard policies and procedures and all security requirements and with applicable leases made available to the Supplier regarding access to and use of the VITA Facilities, including procedures for the physical security of the VITA Facilities. The Supplier is responsible for any damage to VITA Facilities resulting from its use of the VITA Facilities.
- 7.5.5 The Supplier will permit VITA and its agents and representatives to enter any portions of the VITA Facilities occupied by Supplier Personnel at any time.
- 7.5.6 The Supplier may not make improvements or changes involving structural, mechanical or electrical alterations to the VITA Facilities without VITA's prior written approval. Any improvements to the VITA Facilities will become the property of VITA.
- 7.5.7 When VITA Facilities are no longer required for performance of the Services (or at the end of the applicable lease term, whichever is shorter), the Supplier will return them to VITA in substantially the same condition as when the Supplier began use of them, subject to reasonable wear and tear.

- 7.5.8 VITA may, upon reasonable prior written notice to the Supplier, add, remove or change VITA Facilities.

## **7.6 Required Consents**

- 7.6.1 VITA, with the cooperation of the Supplier, is responsible for obtaining Required Consents under any of the leases, contracts or licenses referred to in this **Section 7 (Use of VITA Resources)**. VITA will pay any fees (such as transfer or upgrade fees) required to obtain a Required Consent. Unless and until any Required Consent has been obtained, the Supplier will determine and adopt, subject to VITA's prior approval, such alternative approaches as are necessary and sufficient for the Supplier to provide the Services without the Required Consent.
- 7.6.2 If VITA is not able to obtain any such Required Consent, or if VITA elects not to obtain a Required Consent because of the cost or other terms required to obtain such Required Consent, VITA reserves the right to remove from the scope of this Agreement any affected or related Services, and in such event the Charges will be reduced using the unit rates and charging methodologies provided in **Exhibit 4 (Pricing and Financial Provisions)**, or otherwise in an equitable manner to the extent such unit rates and charging methodologies do not apply to the withdrawn portions of the Services.

## **8. RESOURCE ACQUISITIONS DURING THE TERM**

### **8.1 General Responsibility and Compatibility**

- 8.1.1 The Supplier will provide the Services using equipment, software, tools and processes that are compatible with those used by VITA and other Integrated Suppliers. This includes implementing and maintaining interfaces with VITA and other supplier problem management, change control, and configuration management systems to the extent required to maintain such compatibility.
- 8.1.2 The Supplier will conform to and support VITA Rules, including respecting architecture, standards, and strategic direction in rendering the Services. Any equipment and software provided by or on behalf of the Supplier that connects to VITA's IT infrastructure will comply with all such architecture, standards, and strategic direction and other VITA Rules.
- 8.1.3 Supplier will be responsible for the preparation and implementation of the Refresh plan. At the beginning of each Contract Year, Supplier will prepare a Refresh plan for VITA's approval, which will describe the Equipment to be refreshed during the year to meet Supplier's Refresh obligations. Supplier will report on progress against the Refresh plan on a monthly basis and update the plan quarterly.

Supplier shall Refresh the Hardware and Software throughout the Term in accordance with the approved Refresh plan. During the initial 5-year term, all Hardware shall be Refreshed, and no Hardware shall be beyond OEM support. Supplier shall Refresh 1/5th of the Hardware during each Contract Year, so that the entire population will have been Refreshed during the initial Term.

Supplier shall maintain all Software in versions no older than the current release minus 1.

Supplier will Refresh the Hardware and Software which will maximize the benefit for VITA (the oldest Hardware and Software and those with the highest business impact shall have Refresh priority) while minimizing the business disruption caused by the Refresh.



## 8.2 Equipment

8.2.1 Except for Equipment for which this Agreement expressly assigns financial responsibility to VITA, the Supplier is responsible for acquiring, at its expense, the Equipment (including modifications, upgrades, enhancements, additions and replacements of equipment) as necessary or appropriate to render the Services in compliance with this Agreement. With respect to such Equipment:

- (a) The Supplier will acquire the equipment in the name of the Supplier;
- (b) The Supplier will use commercially reasonable efforts to acquire the right to assign to VITA (and other Customers) the equipment leases and applicable maintenance contracts for such equipment if the Supplier ceases to provide the Services. If the Supplier is unable to obtain such right to assign, the Supplier will explore any alternatives, and provide such information to VITA, including any ramifications to the Services that may arise out of using alternative equipment; and
- (c) If such leased equipment is to be used on a dedicated basis for VITA, then, without VITA's prior written consent, the Supplier will not procure any such leased equipment (i) if the Supplier would not have the right to assign as described above, (ii) if the lease term extends beyond the then-current Term, or (iii) if the lease payment obligations are weighted disproportionately higher in later periods as opposed to earlier periods.

## 8.3 Software and Tools

8.3.1 Except for software and tools for which this Agreement expressly designates VITA as having financial responsibility, the Supplier is responsible for acquiring the software and tools (including modifications, upgrades, enhancements, additions and replacements of software and tools) as necessary or appropriate to render the Services, in its own name, subject to the remainder of this **Section 8.3 (Software and Tools)**.

8.3.2 The Supplier will not use any Supplier-owned (or Supplier Affiliate-owned) software or tools to provide the Services without VITA's prior written consent, which may be granted or withheld in VITA's discretion. The Supplier grants to VITA (and designees including any then-current or future Integrated Suppliers or other Agent for the sole purpose of providing services to or for the benefit of VITA and Customers), a perpetual, worldwide, fully paid up, non-exclusive, transferrable license to Use the Supplier-owned, and the Supplier Affiliate-owned, software and tools used by the Supplier to provide the Services (including programmer interfaces, available Documentation, manuals and other items that may assist VITA with the Use of such software and tools) to provide services similar to the Services to or for the benefit of VITA and the Customers, at no additional charge to VITA. The Parties will mutually agree on applicable terms for the Supplier's support of such software and tools after such termination or expiration; provided that in no event will such terms be more restrictive or otherwise less favorable than offered by the Supplier to similar entities in similar circumstances, and further provided that if VITA elects, support for such software and tools will be done on a time and materials basis using the Personnel Rates set forth in **Exhibit 4 (Pricing and Financial Provisions)**. VITA will not (i) distribute, copy, modify, create derivatives of, decompile, or reverse engineer software except as reasonably necessary for internal Commonwealth use and as permitted by applicable law.

8.3.3 The Supplier will not utilize any third party owned software or tools to provide the Services that are not generally commercially available without VITA's prior written consent, which may be granted or withheld in VITA's discretion. Without limiting VITA's rights under this Section, as a

condition to granting such consent and at no additional charge to VITA, VITA may require the Supplier to obtain for VITA (a) a perpetual, non-exclusive, transferrable license for VITA and the other Customers (and their respective Agents) to Use such non-commercially available third party software and tools (including, where made available to the Supplier, Source Code, programmer interfaces, Documentation, manuals and other materials that may assist with the Use of such software and tools), and (b) a commercially reasonable maintenance and support agreement, to provide services similar to the Services to or for the benefit of VITA and the Customers, at no additional charge to VITA. If the Supplier nonetheless utilizes such third party software or third party tools without obtaining VITA's prior written approval, the Supplier will be obligated to obtain the license (and the maintenance and support agreement) described in the prior sentence at no charge to VITA. Any such third party owned software provided by Supplier as part of its Services, that is licensed directly from the third party owner through an end user licensing agreement (EULA) shall be subject to a mutually agreed to license agreement. Supplier shall have the responsibility to negotiate such license agreement and obtain any necessary approvals from VITA. VITA's standard License Agreement Addendum is attached hereto as **Attachment D (License Agreement Addendum)**. Supplier shall make reasonable efforts to get any such third party software owner to execute such License Agreement Addendum, incorporating whatever modifications are negotiated and agreed to by the Parties. The third party software owner's end user licensing agreement, together with the License Agreement Addendum executed by the third party software owner shall be provided to VITA.

If VITA determines, in its sole discretion, that the third party software owner's EULA or proposed modifications to the LAA are unacceptable, Supplier shall be responsible to provide to VITA at no additional cost an alternate software solution that meets all applicable requirements and provides comparable functionality as the software originally proposed by Supplier.

- 8.3.4 Supplier may use its proprietary tools, namely, Xerox Device Manager (XDM), Xerox Service Manager (XSM), Xerox Integration Services (XIS), Xerox Report Manager (XRM), Xerox Services Portal (XSP), and Xerox Print Management and Mobility Suite (XPMMS) ("Supplier Tools") to provide certain services. Supplier and its licensors will at all times retain all right, title and interest in and to Supplier Tools including without limitation, all intellectual property rights therein, and except as expressly set forth herein, no rights to use, access or operate the Supplier Tools are granted to VITA or the Customers. VITA and Customers shall have the right to use Supplier Tools only if strictly necessary to consume the Services during the Term or during any Transition Out Period. Supplier Tools will be installed and operated only by Supplier or its authorized agents. VITA and the Customers will not decompile or reverse engineer any Supplier Tools, or allow others to engage in same. VITA and the Customers will have access to Data and reports generated by the Supplier Tools. Supplier may remove Supplier Tools at any time in Supplier's sole discretion, provided that the removal of Supplier Tools will not affect Supplier's obligations to perform Services or the functionality of Equipment, and the Customer shall reasonably facilitate such removal.

## 9. IMPLEMENTATION

**9.1 Implementation Generally.** Starting on the Effective Date, the Supplier will perform the Services necessary to complete the Implementation in accordance with the terms set forth in this Agreement, including **Exhibit 2 (Description of Services and Solution)** (collectively, the "***Implementation Services***"). The Implementation Services will be conducted in accordance with the Implementation Plan, which is described in more detail below.

### 9.2 Performance and Completion of Implementation



- 9.2.1 The Supplier will comply with the agreed timetable for performance of each Implementation Milestone and identify and resolve, or assist VITA in the resolution of, any problems encountered in the timely completion of each Implementation Milestone and other Implementation activities. An Implementation will not be considered to be complete until the final Implementation Milestone has been Accepted by VITA in accordance with the Acceptance Criteria and procedures described in the Implementation Plan.
- 9.2.2 VITA Responsibilities (including the responsibilities of third party suppliers) with respect to Implementation Milestones will be as expressly set forth as such in the Implementation Plan.
- 9.2.3 VITA reserves the right to monitor, test and otherwise observe and participate in the Implementation. The Supplier will notify VITA without delay if such monitoring, testing, or participation has caused (or if the Supplier expects it to cause) a problem or delay in an Implementation, and will work with VITA to prevent or circumvent the problem or delay.
- 9.2.4 Acceptance testing of the results of Implementation activities will be carried out in accordance with the Deliverable Acceptance process described in **Section 10 (Deliverables)**, subject to any Acceptance test plan or other specific terms set out in **Exhibit 2 (Description of Services and Solution)**.
- 9.2.5 The Supplier will perform all Implementation activities without causing a disruption to VITA's or other Customer's business operations.
- 9.2.6 Pre-existing/legacy functions that are within the scope of the Supplier's obligations will not be displaced by the Services until the Supplier has demonstrated to VITA's reasonable satisfaction that the affected processes and operations have been successfully migrated to the Supplier and are and will be functioning properly in that environment.
- 9.2.7 In addition to any Deliverable Credits that may be applicable pursuant to **Exhibit 3 (Reporting and Service Level Management)**, if any Implementation Milestone is not completed on schedule, and the delay is due to the Supplier (including its Subcontractors), then without prejudice to VITA's other rights and remedies under this Agreement:
- (a) If the Supplier's Charges to VITA are greater than they would have been if the delayed Implementation Milestone had been completed on schedule, the Supplier will reduce its charges to the amount it would have charged had the delayed Implementation Milestone been completed on schedule;
  - (b) If VITA incurs demonstrable excess or continuing costs that would not have been incurred if the delayed Implementation Milestone had been completed on schedule (e.g., VITA is required to continue to provide services internally or procure them externally for a longer period than contemplated), and such excess or continuing costs exceed any Deliverable Credits earned by VITA, then the Supplier will give VITA an additional credit against the Supplier's monthly Charges in an amount equal to the difference between such excess or continuing costs and the Deliverable Credits. VITA will make commercially reasonable efforts to mitigate any of the costs for which it seeks a credit under this **Section 9.2.7**; and
  - (c) For clarity, VITA will have the right to withhold payment of Implementation Charges associated with any Implementation Milestone as well as fees for subsequent Implementation activities affected by the delay until VITA has accepted the applicable Implementation Milestone.

- (d) Unless equipment is purchased by VITA, or as otherwise provided in this Agreement, Supplier (or the applicable third party vendor) shall at all times retain title to the equipment. The risk of loss for the equipment shall pass to VITA upon delivery to the applicable VITA facilities.

Without limiting other remedies as may be available to VITA at law or in equity, the Supplier hereby acknowledges the remedies provided above in recognition of the risk such default and delay would cause VITA and the inherent difficulty of predicting the damages such default and delay would cause.

**9.3 Implementation Plan.** The Implementation will be conducted in accordance with the approved written Implementation Plan, which written plan will include: (a) a description of the technology methods and procedures, personnel, and organization that the Supplier will use to perform such Implementation; (b) a schedule of Implementation activities; (c) a detailed description of the respective roles and responsibilities of VITA and other Customers, the Supplier and other parties; (d) identification of the specific resources to be provided by VITA or any other Customers to support the Implementation; (e) the completion date for each Implementation activity; (f) the Acceptance Criteria (and, if appropriate, testing) to be applied by VITA in evaluating Implementation Deliverables and Implementation Milestones; (g) a description of any one-time or other Charges to VITA which are associated with the Implementation Plan, including Deliverable Acceptance Criteria and timing for payment(s); and (h) such other information and planning as are necessary to ensure that the Implementation takes place on schedule and without disruption to VITA or other Customer operations. The Supplier will be responsible for preparing, revising, and finalizing the plans; provided that: (x) the Supplier will cooperate and work closely with VITA in finalizing the Implementation Plan (including incorporating VITA changes, modifications, and enhancements to the Implementation Plan and addressing VITA comments); and (y) the final Implementation Plan (and any changes thereto, including any Implementation activities agreed upon after the Implementation start date) will be subject to written approval by VITA. A draft of the Implementation Plan is provided in **Exhibit 2 (Description of Services and Solution)**, and the final Implementation Plan will not alter any requirements in the draft Implementation Plan without the mutual agreement of the Parties.

**9.4 Suspension or Delay of Implementation Activities.** VITA shall have the right, in its sole discretion, to suspend or delay the performance of the Implementation Services and/or the transition of all or any part of the Services. If VITA exercises such right and its decision is based, at least in material part, on reasonable concerns about Supplier's ability to perform the Services or Supplier's failure to perform its obligations under this Agreement, VITA shall not incur any Charges nor shall VITA be required to reimburse expenses in connection with such decision. If VITA's decision is not based, at least in material part, on reasonable concerns about Supplier's ability to perform the Services or Supplier's failure to perform its obligations under this Agreement, VITA shall reimburse Supplier for any additional expenses reasonably incurred by Supplier as a result of such decision, provided that Supplier notifies VITA in advance of such expenses, obtains VITA's approval prior to incurring such expenses, and uses commercially reasonable efforts to minimize such expenses.

## **10. DELIVERABLES**

**10.1 Definition.** "**Deliverable**" is defined in **Exhibit 1.1 (Definitions)**.

**10.2 Software-Related Deliverables.** The Supplier will adequately and comprehensively test any software-related Deliverables prior to providing them to VITA. Software Deliverables will be provided in both Source Code and object code forms.

### **10.3 Review and Acceptance of Deliverables**

- 10.3.1 Upon the Supplier's delivery of a Deliverable and certification that the Deliverable complies in all material respects to the technical, design and functional specifications, VITA may review and, if

applicable, test such Deliverable to determine whether it is free from errors and defects and meets the technical, design or functional specifications of any applicable Acceptance Criteria. **Exhibit 2 (Description of Services and Solution)** and the Service Management Manual may set forth the specific procedure for review and testing by VITA of each Deliverable. The Review Period for each Deliverable will be thirty (30) Business Days after delivery ("**Review Period**"). The Supplier will assist VITA as VITA reasonably requires in review and testing, including by cooperating with the efforts, providing a technical environment to facilitate such review, and providing applicable documentation and information that may assist in such review and testing.

10.3.2 Prior to the expiration of the applicable Review Period, VITA will provide the Supplier a written statement (a "**Deliverable Review Statement**") indicating Acceptance or rejection ("**Rejection**") of the Deliverable. In the event of Rejection, VITA will give its reasons for Rejection with reasonable details of the Non-Conformities.

10.3.3 Notwithstanding the foregoing or anything else to the contrary,

- (a) If VITA does not provide a Deliverable Review Statement by the end of the Review Period, then the Supplier shall inform VITA and provide VITA an additional Review Period of at least fifteen (15) Business Days. If VITA does not Accept or deliver a Rejection by the end of the additional Review Period, then Supplier may escalate for resolution through the governance process under this Agreement. Acceptance will occur only through a Deliverable Review Statement. In no event will a Deliverable be deemed to be Accepted by VITA, even where payment is made for the Deliverable, the Deliverable is used in production, or any other basis;
- (b) Where the use of a completed Deliverable is conditioned upon another event or use with another Deliverable or product that is not available as of the time of delivery of the Deliverable ("**Conditional Event**"), then VITA Acceptance will be conditional, and VITA will have an additional Review Period of at least fifteen (15) Business Days once the Conditional Event has occurred. VITA and the Supplier will make commercially reasonable efforts to agree upon and document any Conditional Events as part of the Acceptance Criteria for a Deliverable;
- (c) In the event of a discovery of a latent defect in a previously Accepted Deliverable, where such latent defect would have qualified as a Non-Conformity at the time of Acceptance, upon notification by VITA or the applicable Customer, Supplier will, at no additional charge, repair or replace or otherwise correct the Non-Conformity to the level of performance specified in this Agreement; and

**10.4 Revision of Deliverables.** If the supplier receives a Deliverable Review Statement indicating Rejection of a Deliverable, the Supplier will provide a proposed corrective action plan within three (3) Business Days, at no cost to VITA. The corrective action plan shall indicate the Supplier's plan to correct the Deliverable so that no Non-Conformities remain within ten (10) Business Days (unless a different time period is mutually agreed by the Parties). Upon the Supplier's revision or correction of the Deliverable, the Supplier will provide VITA with the revised Deliverable, whereupon the acceptance testing procedure and timetable set out in this **Section 10 (Deliverables)** will be repeated.

**10.5 Remedies.** If the Supplier fails to deliver any Deliverable (or any portion thereof) by its required delivery date or if any Deliverable is rejected a second time, then VITA may, in its sole discretion and in addition to any other rights and remedies, take one of the following actions:

- (a) require the Supplier to continue working to conform the Deliverable to the applicable Acceptance Criteria, at no additional cost;
- (b) refuse the Deliverable, in which case VITA will be entitled to a refund of all payments with respect to the Deliverable and shall be relieved of any further obligation to make payments with respect to the Deliverable;
- (c) hire a third party to complete the Deliverable, in which case the Supplier will be responsible for the costs (and any related costs or expenses incurred by VITA) necessary to complete the Deliverable; or
- (d) nevertheless accept the Deliverable, in which case VITA will be entitled to a credit of a portion of all payments made with respect to the Deliverable that reflects the proportionate reduction in the value and utility of the Deliverable as a result of all remaining nonconformities. Acceptance of a Deliverable does not constitute a waiver of any rights and remedies VITA may otherwise have.

## **11. PROPRIETARY RIGHTS**

### **11.1 Commonwealth Works.**

**11.1.1 Ownership by Commonwealth.** All Commonwealth Works, and all modifications or derivatives of Commonwealth Works, including all Intellectual Property Rights therein, shall be owned solely and exclusively by VITA or the Customer.

**11.1.2 License Granted to Supplier.** As of the Effective Date, VITA or the Customer hereby grants, and the Supplier hereby accepts, a limited, non-exclusive, non-transferable, royalty-free license to use Commonwealth Works during the Term, and any Renewal or Transition Out Assistance Period, to the extent necessary to provide Services under this Agreement. Supplier acknowledges that the Commonwealth Works represent the valuable, intellectual property of VITA or the Customer. To the extent necessary for the Supplier to provide Services under this Agreement, the license granted herein extends to Subcontractors designated by the Supplier that sign a written agreement to be bound by all of the terms and conditions applicable to the Commonwealth Works contained in this Agreement.

### **11.2 Supplier Materials.**

**11.2.1 Ownership by Supplier.** Supplier Materials, including all Intellectual Property Rights therein, shall be owned solely and exclusively by Supplier.

**11.2.2 License Granted to Commonwealth.** As of the Effective Date, the Supplier hereby grants, and VITA accepts, for the benefit of the Commonwealth, Customers, and any third-party providers of services to the Commonwealth, a perpetual, non-exclusive, fully paid, transferable, royalty-free license to access, use, modify, copy, adapt, display, perform, and create derivative works of the Supplier Materials to the extent necessary for the Commonwealth to receive the full benefit of the Services during the Term, and any Renewal or Transition Out Assistance Period, and thereafter solely for the internal non-commercial business purposes of the Commonwealth, provided that VITA shall pay any applicable license fees for continued use of the Supplier Materials after the end of the Transition Out Period.

### **11.3 Work Product.**

- 11.3.1 Ownership by Commonwealth.** All Work Product, including all Intellectual Property Rights therein, shall be owned solely and exclusively by the Commonwealth. The Supplier agrees that, to the extent permitted by law, all copyrightable aspects of any Work Product shall be considered a “work made for hire” as defined in the Copyright Act of 1976, as amended. If and to the extent that Supplier may, under applicable law, be entitled to claim any ownership interest in the Work Product, the Supplier hereby irrevocably transfers, grants, conveys, and assigns to the Commonwealth any and all right, title, and interest it now has or may hereafter acquire in and to the Work Product. If any moral rights are created, the Supplier hereby waives such rights in the Work Product.
- 11.3.2 Embedded Supplier Materials.** Notwithstanding anything to the contrary contained in **Section 11.3.2 (Ownership by Commonwealth)**, the Supplier shall retain ownership of, and shall not be deemed to have assigned, its Intellectual Property Rights in any Supplier Materials that are embedded in, incorporated into, or made part of the Work Product. If and to the extent that any Supplier Materials are embedded in or necessary for the use of any Work Product, the Supplier hereby grants VITA, for the benefit of the Commonwealth, Customers, and any third-party providers of services to the Commonwealth, a non-exclusive, perpetual, royalty-free, fully paid, transferrable, irrevocable, worldwide license to Use such Supplier Materials to the extent necessary for the Commonwealth to receive the full benefits of its ownership of the Work Product. VITA or another Customer shall not separate the Supplier Materials from the Work Product in which they are embedded or incorporated for the purpose of creating a standalone product for marketing to others.
- 11.3.3 IP, Materials, and Software Owned by Third Party.** Without VITA’s express written consent, which may be withheld in VITA’s sole discretion, the Supplier shall not embed or incorporate any Third Party IP or Third Party Software in any Work Product, create a derivative work of any Materials or Software owned by a Third Party as Work Product, or include any Materials or Software owned by a Third Party that would cause any Work Product to be subject to an Open Source License. VITA acknowledges that its ownership of such Work Product pursuant to **Section 11.3.1 (Ownership by Commonwealth)** may be subject to or limited by the terms of the underlying agreement with the owner of the Third Party IP, Materials, or Software. At VITA’s direction, the Supplier shall use commercially reasonable efforts to cause the owners of such Third Party IP, Materials, or Software to grant VITA the right to use, and to sublicense third-party service providers to use, any such Third Party IP, Materials, or Software solely and exclusively for the Commonwealth’s internal business purposes or, in the case of third party service providers, for providing services to the Commonwealth.
- 11.3.4 License Granted to Supplier.** Subject to the Commonwealth’s ownership of Work Product, including the Intellectual Property Rights therein, the Commonwealth hereby grants, and the Supplier accepts, a limited, non-exclusive, non-transferrable, royalty-free license to use the Work Product during the Term, and any Renewal or Transition Out Assistance Period, to the extent necessary to provide Services under this Agreement. To the extent necessary for the Supplier to provide Services under this Agreement, such license grant extends to any Subcontractor designated by the Supplier that sign a written agreement to be bound by all of the terms contained in this Agreement applicable to Work Product, and the Intellectual Property Rights therein. The Supplier and any Subcontractors shall not use any of the Work Product for the benefit of any Third Party.
- 11.3.5 Further Assurances.** The Supplier shall take all necessary and proper actions, and will cause its employees, Supplier Affiliates, and any Subcontractors to take such necessary and proper actions,

to effectuate the assignment and ownership provisions set forth in this **Section 11 (Proprietary Rights)**.

**11.3.6 Intellectual Property Protection.** The Supplier shall promptly and fully disclose and deliver all Work Product to VITA. The Supplier acknowledges that VITA or other Customers shall have the sole and exclusive right to file and prosecute any and all applications to secure Intellectual Property Rights in any Work Product. As requested by VITA or other Customers, the Supplier shall promptly and fully cooperate in the preparation and prosecution of all such applications and other documents and in any legal actions and proceedings concerning the Work Product.

**11.4 Delivery of Work Product Upon Termination/Expiration.** Upon any termination or expiration of this Agreement, or any particular Services, the Supplier will promptly deliver to VITA, in accessible electronic form, all Work Product and other works in progress pertaining to the Work Product, as well as Commonwealth Works and any Supplier Materials to which VITA has been granted (or is to be granted) license rights pursuant to this Agreement, in each case that are in the Supplier's possession or control.

**11.5 Residuary Rights.** The Parties will be entitled to use the general knowledge and experience gained and retained in the unaided human memory of their personnel in connection with this Agreement, provided that in doing so they do not disclose Confidential Information of the other Party (or its Affiliates, in the case of the Supplier; or other Customers, in the case of VITA) in violation of this Agreement or misappropriate or infringe the Intellectual Property Rights of the other Party (or its Affiliates or other Customers, as applicable) or third parties who have licensed or provided materials to the other Party (or its Affiliates or other Customers).

**11.6 Intellectual Property Rights Agreements with Supplier Personnel.** The Supplier is responsible for having in place with all Supplier Personnel (either directly or indirectly through their respective employers) and enforcing such agreements respecting Intellectual Property Rights and moral rights as are necessary to give full effect to this **Section 11 (Proprietary Rights)**.

**11.7 Licenses and Rights Survive Bankruptcy and Insolvency.** In the event of the commencement of bankruptcy proceedings by or against the Supplier (or a Supplier Affiliate) under the U.S. Bankruptcy Code, the Parties intend that all rights and licenses granted under or pursuant to this Agreement by the Supplier to VITA are, for purposes of Section 365(n) of the U.S. Bankruptcy Code, licenses of rights to "intellectual property," as defined in Section 101 of the U.S. Bankruptcy Code and to the fullest extent applicable and possible, VITA shall have benefit of the provisions of Section 365(n) of the U.S. Bankruptcy Code, or successor provision.

## **12. TERMINATION**

**12.1 Termination by VITA for Cause.** If any of the following occurs, VITA may terminate this Agreement for cause (in whole or in part), without liability to VITA, other than liability for the then-current balance of the Existing Asset Purchase milestone payments as described in Exhibit 4, by giving written notice of termination. Any such termination by VITA will not constitute an election of remedies and will be without prejudice as to VITA's other rights and remedies:

- (a) Supplier commits a material breach of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of the breach from VITA;
- (b) Supplier commits a material breach of this Agreement which is not capable of being cured within thirty (30) days;



- (c) Supplier commits multiple breaches of this Agreement, whether material or non-material, that collectively constitute a material breach of this Agreement;
- (d) Supplier fails to satisfy certain particular Service Level requirements, as expressly set forth in **Exhibit 3 (Reporting and Service Level Management)** (provided that this right to terminate will not be construed as precluding VITA from claiming that some other combination of failures to meet Service Levels is a material breach of this Agreement and to exercise any available remedies in connection with such material breach);
- (e) Supplier becomes suspended or debarred from doing business with any governmental entity. The Supplier immediately will notify VITA if the Supplier or any of its Subcontractors becomes suspended or debarred by any governmental entity;
- (f) Supplier becomes liable for or incurs Service Level Credits that, in the aggregate, exceed fifty percent (50%) of the cumulative At Risk Amount during any rolling six (6) month period;
- (g) Supplier fails to perform in accordance with the Minimum Service Level for the same Critical Service Level for three (3) consecutive months or has more than five (5) Service Level Defaults of one (1) or more Critical Service Levels over a three (3) consecutive month period; or
- (h) any other event occurs that, pursuant to the express terms of this Agreement, permits VITA to terminate this Agreement for cause or material breach.

The express acknowledgment that a certain amount of Service Level Credits or number of Service Level defaults constitutes grounds for termination under **Section 12.1(f)** and **(g)** does not imply that a lesser amount or number cannot constitute a material breach of this Agreement and therefore grounds for termination under other subsections.

**12.2 Termination by VITA for Convenience.** VITA may terminate this Agreement (in whole or in part), at any time for its convenience (i.e., for any reason or no reason, including if consumption of a Service falls to zero) by giving the Supplier at least sixty (60) days' prior written notice. Any early termination for convenience shall be subject to termination charges as described in Exhibit 4.0. If a purported termination for cause by VITA is found by a competent authority not to have been a proper termination for cause, then such termination will be deemed to have been a termination for convenience by VITA under this paragraph. Without limiting the foregoing, VITA may terminate any Statement of Work in whole or in part upon ten (10) days prior notice.

**12.3 Termination by VITA for Other Reason.** VITA may terminate this Agreement under any of the following scenarios:

- 12.3.1 Privatization, Divestiture or Dissolution of VITA. In the event the Commonwealth elects to privatize, divest its control over or dissolve VITA through a single transaction or series of related transactions, VITA may terminate this Agreement, as of a date specified in a notice of termination from VITA.
- 12.3.2 Change in Control. If there is a Change in Control of the Supplier, VITA may terminate this Agreement (in whole or in part), by giving the Supplier at least thirty (30) days' prior written notice. **"Change in Control of the Supplier"** means an announcement by the Supplier (whether or not ultimately consummated) (a) that any other entity, person or "group" (as such term is used in Section 13(d) of the Securities Exchange Act of 1934, as amended) will acquire (and eventually does acquire) Control, or all or substantially all of the assets, of the Supplier (or any parent company of the Supplier), whether directly or indirectly, in a single transaction or series of related



transactions, or (b) that the Supplier (or any parent company of the Supplier) will consolidate with, or be merged with or into, another entity, or will sell, assign, convey, transfer, lease or otherwise dispose of all or substantially all of the assets of the Supplier to another person(s) or entity(ies).

12.3.3 Adverse Changes in the Supplier's Financial Circumstances. Upon written request from VITA, Supplier will have ten (10) days to certify that none of the circumstances below have occurred as of the date of certification or, to the best of the Supplier's knowledge, are likely to occur within twenty four (24) months after the date of certification:

- (a) Supplier (i) has filed a petition in bankruptcy; (ii) has had an involuntary petition in bankruptcy filed against it which is not challenged within twenty (20) days and dismissed within sixty (60) days; (iii) has become insolvent; (iv) has made a general assignment for the benefit of creditors; (v) has admitted in writing its inability to pay substantially all of its debts as they mature; (vi) has had a receiver appointed for its assets; or (vii) has had any significant portion of its assets attached; or
- (b) Moody's Investors Service, Standard & Poors, or Dun & Bradstreet has lowered the Supplier's credit rating from the rating as of the Effective Date by more than two (2) steps.

The Supplier will notify VITA in writing as soon as possible if one of the circumstances described above occurs or is likely to occur.

If one of the above listed circumstances does occur, in addition to the other rights and remedies set forth herein, and to the maximum extent permitted by Law, VITA may terminate this Agreement by giving thirty (30) days written notice to Supplier. In addition having the right to terminate, VITA will have the immediate right to retain possession (and, to the extent not in its possession, take possession) for safekeeping of all VITA Data, VITA Confidential Information, Work Product, Intellectual Property and any other materials that are licensed to VITA in accordance with this Agreement, VITA owned Equipment, and all other Equipment or Systems to which VITA or the other Customers are or would be entitled during the Term or upon the expiration or any termination of this Agreement. The Supplier will cooperate fully with VITA and the other Customers and assist VITA and the other Customers in identifying, retaining or taking possession of the items listed in the preceding sentence. VITA will have the right to hold such VITA Data, Confidential Information, Materials, Equipment and Systems until such time as the trustee in bankruptcy, receiver, manager or other similar person or Entity, can provide adequate assurances and evidence to VITA (which, in the sole discretion of VITA, may require the entry of an order to such effect that has become a final order and is no longer subject to appeal) that VITA and the other Customers will be protected from sale, release, inspection, publication, or inclusion in any publicly accessible record, document, material or filing. The Supplier and VITA agree that without this material provision, VITA would not have entered into this Agreement or provided any right to the possession or use of VITA Data, VITA Confidential Information or VITA IP covered by this Agreement.

12.3.4 Non-Appropriation of Funds. Supplier acknowledges that VITA's funding comes in whole or in part from Customers based on fees charged by VITA to other Customers for their use of the Services. All payment obligations of VITA under this Agreement are subject to the availability and legislative appropriation for this purpose, including appropriations to other Customers. In the event of non-appropriation of funds, irrespective of the source of funds, VITA may terminate this Agreement in whole or in part in such manner and for such periods of time as VITA may elect for itself and the other Customers. VITA will provide notice of termination within sixty (60) days after

VITA's receipt from any of the Customers of notice of non-appropriation. VITA's obligation to pay for Transition-Out Assistance is not affected by a termination for non-appropriation funds.

**12.3.5 Regulatory Termination Rights.** If VITA, any Customer(s) or the subject matter of this Agreement become subject to a legislative or regulatory change or the revocation of statutory or regulatory authority that would (1) render the continued provision of the Services impossible or unnecessary, (2) render this Agreement invalid, illegal or otherwise unenforceable, or (3) substantially decrease the amount and types of the Services, then VITA may, upon notice to the Supplier, terminate this Agreement, in whole or in part. If Supplier becomes listed on the prohibited vendors list authorized by Executive Order Number 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of the Treasury, Office of Foreign Assets Control, then VITA may, upon notice to the Supplier, terminate this Agreement, in whole, or in part.

**12.4 No Termination by Supplier.** Supplier shall have no right to terminate this Agreement.

### **13. TRANSITION OUT ASSISTANCE**

**13.1 General.** Commencing twelve (12) months prior to expiration of this Agreement or on such earlier date as VITA may request, or commencing upon a notice of termination (including notice based upon default by VITA) or of non-renewal of this Agreement, and continuing (as requested by VITA) for up to eighteen (18) months following the effective date of expiration or termination of this Agreement, or a portion thereof, the Supplier will provide such assistance described in this **Section 13 (Transition Out Assistance)** to VITA, other Customers, and Integrated Suppliers, at VITA's request (the "**Transition Out Assistance**"). The Supplier also will provide Transition Out Assistance in the event of any notice of partial termination of this Agreement, or any other cessation or expected cessation of Services, such assistance to commence upon VITA's request. The quality of the Services provided by the Supplier, and the Supplier's performance of the Services, including the Affected Services, will not be degraded during the Transition Out Assistance Period. The Supplier will not make any changes to the number of Supplier Personnel providing Services during the Transition Out Assistance Period or reassign Supplier Personnel away from performing Services under this Agreement during the Transition Out Assistance Period. Transition Out Assistance will include the assistance and obligations, as requested by VITA, described in **Section 13.3 (Transition Out Assistance)** and in the Transition Out Plan as described below and in **Exhibit 2.5 (Transition Out Plan)**.

**13.2 Transition Out Plan.** As further described in **Exhibit 2.5 (Transition Out Plan)**, the Supplier will create, prior to the Commencement Date, a written Transition Out Plan addressing the transition of Services, in whole or in part, away from the Supplier and to VITA or its designee (the "**Transition Out Plan**"). The Supplier will maintain the Transition Out Plan during the Term, and update the Transition Out Plan annually prior to the end of each Contract Year, in accordance with the terms of **Exhibit 2.5 (Transition Out Plan)** and subject to VITA approval.

**13.3 Transition Out Assistance.** As part of the Transition Out Assistance, Supplier shall provide all assistance as VITA may reasonably request to transition the Affected Services to VITA or its designee. This obligation may extend beyond originally scheduled or noticed expiration or termination of the Affected Services for a period not to exceed eighteen (18) months and may include the following:

**13.3.1 General Support.** To the extent requested, Supplier shall (A) assist VITA or its designee(s) in updating and detailing the Transition-Out Plan as appropriate to effect the specific disengagement, (B) perform programming and consulting services to assist in implementing the Transition-Out Plan, (C) train personnel designated by VITA or its designee(s) in the use of any business processes, work instructions and work procedures and any equipment, software, systems, materials and tools used in connection with the performance of the Affected Services, (D) catalog all business processes, work instructions, work procedures, software, VITA Data,

equipment, materials, third party contracts and tools used to provide the Affected Services, (E) provide machine readable and printed listings and associated documentation for Source Code for software owned by VITA or any other Customer and Source Code to which VITA or any other Customer is entitled under this Agreement and assist in its re-configuration, (F) provide technical documentation for Software used to provide the Affected Services, (G) assist in the execution of a parallel operation, data migration and testing process until the successful completion of the transition of the Affected Services to VITA or its designee(s), (H) create and provide copies of the VITA Data related to the Affected Services in the format and on the media reasonably requested by VITA and/or its designee(s), (I) provide a complete and up-to-date, electronic copy of the Service Management Manual and applicable business processes, work instructions and work procedures in the format and on the media reasonably requested by VITA, and (J) provide other technical assistance requested by VITA that is reasonably related to the disengagement with respect to the Affected Services. All Transition Out Assistance shall be provided subject to and in accordance with the terms and conditions of this Agreement, including Service Levels.

- 13.3.2 Continuation of Services. At VITA's request, Supplier shall continue providing any or all of the Affected Services beyond their originally noticed removal, expiration or termination date. Supplier shall provide any such Affected Services subject to and in accordance with the then applicable terms and conditions of this Agreement and VITA shall pay Supplier the Charges specified in this Agreement that VITA would have been obligated to pay Supplier for such Affected Services if this Agreement had not yet expired or been terminated or had the Affected Services not been removed. To the extent VITA requests a portion of the Services included in a particular Charge, the amount to be paid by VITA shall be adjusted to reflect the portion of the Affected Services included in such Charge that Supplier shall not be providing or performing.
- 13.3.3 Hiring. VITA and its designee(s) shall be permitted to undertake, without interference from Supplier or Subcontractors (including counter-offers), hiring of any Supplier Personnel assigned to the performance of Affected Services during the twelve (12) months prior to the commencement of the Transition Out Assistance Period. Supplier shall waive, and shall cause its Subcontractors to waive, their rights, if any, under contracts with such personnel restricting the ability of such personnel to be recruited or hired by VITA or its designee(s). Supplier shall provide VITA and its designee(s) with reasonable assistance in their efforts to hire such Supplier Personnel, and shall give VITA and its designee(s) reasonable access to such Supplier Personnel for interviews, evaluations and recruitment. VITA shall endeavor to conduct the above-described hiring activity in a manner that is not unnecessarily disruptive of the performance by Supplier of its obligations under this Agreement.
- 13.3.4 Equipment. Except as otherwise agreed by VITA in connection with Supplier's first utilization in performance of the Services, VITA shall have the right (but not the obligation) to purchase or assume the lease for (itself or by its designee) any Equipment owned by Supplier that is fully dedicated to the performance of the Affected Services. If so purchased or leased, such Equipment shall be transferred in good working condition, reasonable wear and tear excepted, as of the completion of any Affected Services requiring such Equipment. Supplier shall maintain such Equipment through the date of transfer so as to be eligible for the applicable manufacturer's maintenance program at no additional charge to VITA or its designee(s). Supplier shall grant to VITA or its designee(s) a warranty of title and a warranty that such Equipment is free and clear of all liens and encumbrances. Such conveyance by Supplier to VITA or its designee(s) shall be at the lesser of fair market value or net book value calculated in accordance with generally accepted accounting principles. At VITA's request, VITA and Supplier shall negotiate in good faith and agree upon the form and structure of the purchase or lease.

- 13.3.5 Return of Customer Property. Supplier shall return to VITA (or applicable Customer), any equipment or other property of VITA (or applicable Customer) if not previously returned, in condition at least as good as the condition when made available to Supplier, ordinary wear and tear excepted. Supplier shall further return to VITA all VITA Data, VITA Intellectual Property and Work Product in accordance with the terms, including VITA Rules, of this Agreement.
- 13.3.6 Third Party Contracts. Supplier shall promptly provide to Customer a list of all subcontracts and third party contracts used to perform the Affected Services. Except as otherwise approved by VITA in conjunction with the first use in performance of the Services, Supplier shall, at VITA's request, cause any such Subcontractors, Supplier Affiliates, or third party contractors to permit VITA or its designee(s) to assume prospectively any or all such subcontracts or third party contracts or to enter into new contracts with VITA or its designee(s) on substantially the same or more favorable terms and conditions, including price. Supplier shall so assign the designated contracts or cause such contracts to be assigned to VITA or its designee(s) after the Services requiring such contracts are no longer being provided by Supplier. There shall be no charge or fee imposed on VITA or its designee(s) for such assignment. Supplier shall (A) represent and warrant that it is not in default under such contracts and that all payments have been made under such contracts through the date of assignment, and (B) notify VITA of any contractor's default with respect to such contracts of which it is aware at the time.
- 13.3.7 Agreement Closeout. Prior to the expiration or scheduled termination date of this Agreement, Supplier may be provided contract close out documentation and shall complete, sign and return to VITA Supply Chain Management within thirty (30) days of receipt. This documentation may include: Patent/Royalty Certificate, Tangible Property/Asset Certificate, Escrow Certificate, Supplier Procurement and Subcontracting Monthly Reports Completion Certificate, SWaM Subcontracting Certification of Compliance documentation as described in **Section 15.11 (Reporting and Fees from Supplier)**, Sales Reports/IFA Payments Completion Certificate, and Final Payment Certificate. Any closeout documentation not received within thirty (30) days of Supplier's receipt of the Commonwealth's request will be documented in the contract file as Supplier non-compliance. Supplier's non-compliance may affect any pending payments due the Supplier under the Agreement, including final payment, until the documentation is returned.

**13.4 Required Consents.** The Supplier will be financially responsible and administratively responsible (with the cooperation of VITA) for obtaining the Required Consents for any software and tools for which the Supplier is obligated to provide a license to VITA under this Agreement, as well as any equipment having leases that the Supplier is required to assign to VITA under this Agreement (in each case, including the Required Consents for any associated maintenance agreements). To the extent applicable, VITA will be financially responsible and the Supplier will be administratively responsible (with the cooperation of VITA) for obtaining a Required Consent necessary to assign a software or tool license or equipment lease (and associated maintenance agreements) for any software, tool or equipment not covered by the prior sentence.

### **13.5 Charges for Transition Out Assistance**

- 13.5.1 Transition Out Assistance will be chargeable at the applicable Personnel Rates set forth in **Exhibit 4 (Pricing and Financial Provisions)** or (if Supplier Personnel providing Transition Out Assistance do not have rates associated with them in **Exhibit 4 (Pricing and Financial Provisions)**) at Preferred Rates. Notwithstanding the foregoing, there will be no additional charge for such Transition Out Assistance under either of the following circumstances:

- (a) to the extent the Supplier is able to provide Transition Out Assistance during the Supplier's normal working hours, without adversely impacting the ordinary course of the

Supplier's provision of the Services, using then-existing resources used to perform the Services, without adversely affecting Service Levels and without incurring additional third party expenses (and if the Supplier is not able to provide such Transition Out Assistance under such conditions, then the Supplier will promptly notify VITA and will work in good faith at VITA's request to explore options that could minimize or eliminate such additional charges on a commercially reasonable basis, such as by substituting or reprioritizing work); or

- (b) following a notice of termination by VITA for cause under **Section 12.1 (Termination by VITA for Cause)**.

If the Supplier believes that any Transition Out Assistance requested by VITA qualifies as chargeable, then the Supplier must inform VITA in writing prior to commencing the work the Supplier believes is chargeable. No Transition Out Assistance will be chargeable to VITA unless the Supplier has obtained VITA's written approval prior to commencing any chargeable work for Transition Out Assistance.

## **13.6 Procurement Assistance**

13.6.1 At any time, VITA may consider or seek offers for performance of services similar to the Services. As and when requested by VITA, and without limiting any other rights VITA has to information about or related to the Services, the Supplier will provide to VITA all information and other cooperation regarding performance of the Services as VITA deems necessary to enable VITA to prepare a request for proposal relating to some or all of such services, and for a third party to conduct due diligence and prepare an informed, non-qualified offer for such services.

13.6.2 Without limiting the generality of **Section 13.6.1** above, the types of information and level of cooperation to be provided by the Supplier pursuant to this **Section 13.6.2** will be no less than those initially provided by VITA to the Supplier prior to the Effective Date, and will include the following information which VITA may distribute to third party bidders in a request for proposal(s), request for information, specification, or any other solicitation relating to the Services and as necessary to support any related due diligence activities:

- (a) The number of Supplier Personnel at each location used to provide Services classified by job title, skill level, experience, and general roles and responsibilities;
- (b) Information on VITA's IT environment managed by the Supplier; and
- (c) Service performance histories, up-to-date asset inventories (including equipment and software), then-current work volumes and information relating to Statements of Work underway or subject of proposal.

## **14. AUDITS, RECORDS AND REPORTING**

**14.1 Supplier Record Keeping.** The Supplier will maintain complete and accurate records of, and supporting documentation for, all Charges, all VITA Data and all transactions, third party contracts, authorizations, changes, implementations, soft document accesses, reports, filings, returns, analyses, procedures, controls, records, data or information created, generated, collected, processed or stored by the Supplier in the performance of its obligations under this Agreement ("Contract Records"). The Supplier will maintain such Contract Records in accordance with applicable Laws, including VITA's and Customer's record retention policies both during the Term and for the length of time required by such policies thereafter (the "Audit Period").



**14.2 Commonwealth Audit Rights.** At any time during the Audit Period, VITA and the other Customers (and internal and external auditors, inspectors, regulators and other representatives that VITA or any Customers may designate from time to time, including the Virginia Auditor of Public Accounts, Office of Planning and Budget, any Governmental Authority(ies), governmental entities, customers, vendors, licensees, and other third parties) (collectively, "VITA Auditors"), may audit Systems, facilities, processes, and books and records of the Supplier (including audits of the Supplier's legal compliance and the Supplier's Security Program) and of the Supplier's Subcontractors in connection with all matters related to this Agreement. The Supplier may require that third party VITA Auditors (other than Commonwealth entities) enter into a confidentiality agreement with the Supplier prior to conducting such audits, provided that such confidentiality agreement will be reasonable and have confidentiality terms no more stringent than the confidentiality terms set forth in this Agreement. Such audits and inspections may be used at VITA's option to, among other things: (a) determine the accuracy of invoiced Charges, (b) verify the integrity of VITA Data, (c) examine the systems that process, store, support and transmit that data (including system capacity, performance and utilization), (d) examine internal controls (e.g. financial controls, human resources controls, organizational controls, input/output controls, system modification controls, processing controls, system design controls and access controls) and the security, Disaster Recovery and back-up practices and procedures, (e) examine the Supplier's performance of the Services, (f) verify the Supplier's reported performance against the applicable Service Levels, (g) examine the Supplier's measurement, monitoring and management tools, (h) enable VITA and the other Customers to meet applicable legal, regulatory and contractual requirements, and (i) otherwise verify compliance with the Supplier's obligations under this Agreement. The Supplier will (i) provide any assistance reasonably requested by VITA Auditors in conducting any such audit, including installing and operating audit software, (ii) make requested Supplier Personnel, records and information available to VITA Auditors, (iii) in all cases, provide such assistance, personnel, records and information in an expeditious manner to facilitate the timely completion of any such audit and (iv) if so requested, allow requesting VITA Auditors to visit the Supplier Facilities for purposes of verifying and observing Supplier's or any of its subcontractors' compliance with Laws or contractual requirements.

**14.3 Results of Audits.** If an audit reveals a breach of this Agreement (other than a de minimus breach), Supplier will, upon VITA's request, promptly reimburse VITA for the reasonable costs of the audit (including auditors' fees), including any follow-up audit to verify that such breach has been corrected. If, as a result of an audit, it is established that the Supplier has overcharged VITA, VITA will notify the Supplier of the amount of such overcharge and the Supplier will promptly refund to VITA the amount of the overcharge, plus interest which will be calculated from the date the overpayment was made until the date of the refund, chargeable at the prime rate as reported in the Wall Street Journal as of the date of such refund. Further, if the results of any such audit show that the Supplier overcharged VITA by more than three percent (3%) for the period and scope of Services being audited, then the Supplier also will reimburse VITA for the costs of such audit. If the audits uncover a deficiency or other failure of the Supplier to comply with its obligations under this Agreement or Laws, then the Supplier will, at its expense, promptly take action to alleviate the discrepancy and comply with such requirements or Laws.

**14.4 Further Audits by Governmental Authorities.** Without limiting the foregoing, acceptance of funds under this Agreement by the Supplier acts as acceptance of the authority of the VITA Auditors (and any other of the Commonwealth's auditors), any other officer of the Commonwealth with jurisdiction, and any applicable Governmental Authority to conduct audits and investigations in connection with those funds. Such Entities will at any time have access to and rights to examine, audit, excerpt and transcribe any pertinent books, documents, working papers and records of the Supplier relating to this Agreement. The Supplier will fully cooperate with and provide all assistance requested by any such Entities in the conduct of such audits or investigations, including providing all records requested.

#### **14.5 Supplier Audits**

**14.5.1 ISO/IEC 27001, 27002 Security Review.** At least annually, the Supplier will engage a recognized, independent security firm to perform, as part of the Services, a formal security review of each of

the Supplier Facilities (including any Subcontractor sites) from which Services are performed. Such reviews will be carried out in conformance with the ISO/IEC 27001 and 27002 standards (as each may be modified or replaced from time to time), and the Supplier will provide VITA with a copy of its ISO 27001 Certification and a Statement of Applicability for each such Supplier Facility (including any Subcontractor sites) at or from which VITA Data is stored or processed.

**14.5.2 Service Organization Control Audits.** On an annual basis, for each of the Supplier Facilities at or from which Services are performed (including any Subcontractor sites), Supplier will engage a recognized, independent accounting firm to conduct, as part of the Services, audit activities to generate: (i) an AICPA compliant SOC 2 (Type-2) report of all systems, processes, and controls related to Supplier's performance of the Services and (ii) a SOC 1 (Type-2) report carried out in accordance with Statement on Standards on Assurance Engagements (SSAE) No. 18, Reporting on Controls at a Service Organization. Upon request, Supplier shall provide VITA with a non-redacted copy of all such audit and assurance reports. All follow-on audit activities reasonably necessary to demonstrate resolution of deficiencies identified in any such reports shall be considered part of the Supplier's annual audit obligations under this section. Such audit activities will be conducted in relation to VITA's control requirements. The Supplier will permit VITA to participate in the planning of each such audit, will confer with VITA as to the scope and timing of the audit and will accommodate VITA requirements and concerns to the extent practicable. The Supplier's management will execute any representations, attestations or other documents required in connection with such audits.

**14.5.3 General Audits.** In addition, throughout the Term, the Supplier will conduct its own audits pertaining to the activities under this Agreement consistent with the audit practices of well-managed companies that perform services similar to the Services.

**14.5.4 Reports and Attestations.** The Supplier will promptly provide to VITA and VITA Auditors a report of each Supplier audit performed by or on behalf of the Supplier as described in this section (redacted to exclude information unrelated to the Services). More specifically, the Supplier or its auditor will provide to VITA at least one (1) hard copy and one (1) electronic copy of the report from each such audit at no charge. VITA will have the right to further distribute copies of such reports, without modification, including to Customers, VITA Auditors and other third parties that have a need to know. The Supplier's management will execute any representations, attestations or other documents required in connection with any audit performed (or required to be performed) under this section.

**14.6 Supplier Audit Response.** Following an audit or examination by or on behalf of VITA, at VITA's option, VITA will conduct, or request the VITA Auditors to conduct, an exit conference with the Supplier to obtain factual concurrence with issues identified in the review. Further, the Parties will meet to review each audit report described in this Section 14 (Audit and Records), promptly after the issuance thereof, to agree upon the appropriate manner, if any, in which to respond to the changes suggested by the audit report. The Parties agree to develop operating procedures for the sharing of audit and regulatory findings and reports produced by auditors or regulators of either Party. The Supplier will develop and agree upon a remediation plan, subject to VITA's review and approval, to promptly address and resolve any deficiencies, concerns or recommendations identified through any audits, examinations, or tests described in this Section 14 (Audits, Records, and Reporting), and the Supplier, at its own expense, will undertake action in accordance with such plan and the dates specified therein to the extent necessary to comply with the Supplier's obligations under this Agreement.

**14.7 Reporting and Fees from Supplier.** Supplier is required to submit to VITA the following monthly reports:

- (a) Report of Sales; and



(b) Small Business Procurement and Subcontracting Report.

These reports must be submitted using the instructions and further detailed requirements and templates found at the following URL: <http://www.vita.virginia.gov/scm/default.aspx?id=97>. Suppliers are encouraged to review the site periodically for updates on Supplier reporting requirements and methods.

At the time the final invoice is sent to VITA under this Agreement, Supplier shall provide a SWaM Subcontracting Certification of Compliance certifying that Supplier has fully complied with the Supplier's Procurement and Subcontracting Plan ("Plan"), a copy of which is attached as **Attachment E (Supplier Procurement and Subcontracting Plan)**. If Supplier has failed to fully comply, meaning there is any variance between the Plan and Supplier's actual subcontractor spend, the SWaM Subcontracting Certification of Compliance must include a written explanation of the variance. Further, VITA may require Supplier to submit on a scheduled basis (monthly, quarterly, or other frequency) a SWaM Subcontracting Certification of Compliance detailing Supplier's compliance or variance to-date, along with any variance explanation. All SWaM Subcontracting Certifications of Compliance shall be certified and signed by Supplier's contractually authorized representative. Should Supplier fail to comply with its contractually obligated Plan or fail to report its spend, VITA may, at its sole discretion, prohibit or delay any renewals or extensions of this Agreement or VITA may terminate this Agreement, and/or may withhold any final payments due. Supplier's failure to comply shall be considered in the prospective award of any future contracts to Supplier. Failure to comply with all reporting and other requirements in this **Section 15.11 (Reporting and Fees from Supplier)** may result in default of this Agreement.

Supplier shall report sales and pay to VITA the following monthly fees in accordance with instructions described on the Supplier Reporting webpage located at: <http://www.vita.virginia.gov/scm/default.aspx?id=97>

The Sales Reporting System used to report and submit Supplier's monthly sales data will include these fees and percentages:

- IFA: 2% of monthly sales under this Agreement.

## **15. REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **15.1 Mutual Warranties.** Each of the Parties represents that:

- 15.1.1 It has the right and power to enter into this Agreement;
- 15.1.2 An authorized representative has executed this Agreement;
- 15.1.3 If any consent, approval, or withholding of objection is required from any external authority or party with respect to the entering into of this Agreement, it has been obtained; and
- 15.1.4 It is under no obligation or restriction, nor will it assume any such obligation or restriction, that would in any way interfere or conflict with any of its obligations under this Agreement.

### **15.2 Standards and Personnel.** The Supplier represents and warrants that:

- 15.2.1 The Services will be performed promptly and diligently in a professional and workmanlike manner, in accordance with industry standards; and

- 15.2.2 The Supplier will use an appropriate number of Supplier Personnel with suitable training and the requisite skills and experience to perform the Services.

### **15.3 Title, Required Rights and Non-Infringement**

- 15.3.1 The Supplier represents and warrants to VITA that (a) the Supplier has all right, title and interest in and to the Work Product and the Supplier Materials (including all Intellectual Property Rights therein) to the extent necessary for the Supplier to grant to VITA the ownership rights and licenses and use rights granted under this Agreement; (b), no additional materials or licenses will be required to use the Services and Work Product except as expressly set forth in this Agreement; and (c) Work Product will be delivered to VITA free and clear of all liens, defects in title, and imperfections in title.
- 15.3.2 The Supplier further represents and warrants to VITA that (a) the Supplier has the right to provide the Services, including (as applicable) any rights of way, easements, leases and licenses, and (b) the Work Product and the Supplier Materials (and the use thereof, as contemplated by this Agreement) will not infringe or misappropriate the Intellectual Property Rights or any other rights of any third party. If the Supplier at any time is aware of an allegation or claim that any Services, Work Product or the Supplier Materials (or use thereof) infringe or misappropriate the Intellectual Property Rights or any other rights of any third party, or if the Supplier has reason to believe that such an allegation or claim is forthcoming, then the Supplier will promptly provide notice of such to VITA.

### **15.4 Deliverable Warranty**

- 15.4.1 The Supplier warrants that for 180 days beginning with Acceptance of a Deliverable, the Deliverable will (a) be free from Non-Conformities and errors in materials, design, workmanship, operation and performance; (b) function in accordance with the applicable Documentation; and (c) conform to its corresponding specifications (unless a different warranty period is agreed and as otherwise set forth herein). For any Deliverable that is subject to a Conditional Event (defined in **Section 10.310.3 (Review and Acceptance of Deliverables)**), the warranty period will continue for 180 days after the occurrence of the Conditional Event. In the case of use with another Deliverable, the 180-day period will begin upon Acceptance of the other Deliverable.
- 15.4.2 The Supplier agrees to correct any Deliverable not in compliance with the Deliverable Warranty brought to its attention by VITA. Such correction shall be at no charge to VITA, and shall be completed within a reasonable period of time under the circumstances, but no more than ten (10) Business Days or as otherwise expressly agreed in writing by the Parties. The warranty period will be extended on a day-for-day basis for any time between (i) VITA's notifying the Supplier of a failure and (ii) the Supplier delivering a compliant Deliverable back to VITA (plus a reasonable period of time to re-implement the Deliverable in VITA's environment). For clarity, the warranties described herein are applicable during any Transition Out Assistance Period.
- 15.4.3 If the Supplier does not correct a Deliverable within the required time period, then VITA may, in its sole discretion and in addition to any other rights and remedies available to VITA, (a) require the Supplier to continue working to correct the Deliverable, (b) hire a third party to correct the Deliverable, in which case the Supplier will be responsible to reimburse VITA for the costs for such services (and any related costs or expenses incurred by VITA), or (c) require the Supplier to provide an equitable credit as a partial refund for such Deliverable.

### **15.5 Compliance with Laws and VITA Rules; Incorporated Contractual Provisions**

- 15.5.1 The Supplier represents and warrants that it will maintain in force all necessary regulatory approvals, licenses, and permits applicable to its and its Subcontractors' businesses or necessary for the Supplier to provide the Services.
- 15.5.2 The Supplier represents and warrants that it will comply (and cause its Subcontractors and Supplier Personnel to comply) at all times with all Laws relevant or applicable to the Supplier's and its Subcontractors' businesses, to the Services, or to the Supplier's other obligations under this Agreement, including Laws relating to privacy, data security, financial controls, immigration, and export and import control, as such Laws may change from time to time.
- 15.5.3 The Supplier represents and warrants that it will provide the Services in a manner that does not cause VITA (or any Customer) to be non-compliant with or in breach of any Law.
- 15.5.4 If the Supplier is charged with failure to comply with any Laws in relation to performance under this Agreement, it will cooperate fully with all Governmental Authorities in connection therewith.
- 15.5.5 The Supplier represents and warrants that it will comply (and cause its Subcontractors and Supplier Personnel to comply) at all times with any VITA Rules, procedures and guidelines applicable to performance of the Services.
- 15.5.6 Supplier represents and warrants that it has the financial capacity to perform and continue to perform its obligations under this Agreement; that Supplier has no constructive or actual knowledge of a potential legal proceeding being brought against Supplier or Subcontractors that could materially adversely affect performance of this Agreement; and that entering into this Agreement is not prohibited by any contract, or order by any court of competent jurisdiction.
- 15.5.7 Without limiting the foregoing, Supplier warrants that it will comply with the following contractual provisions required by Law or by VITA, and that are hereby incorporated by reference:
- (a) The terms provided at [http://www.vita.virginia.gov/uploadedfiles/VITA\\_Main\\_Public/scm/StatutorilyMandatedTsandCs.pdf](http://www.vita.virginia.gov/uploadedfiles/VITA_Main_Public/scm/StatutorilyMandatedTsandCs.pdf) or successor URL(s) (a copy of which, current as of the Agreement Effective Date, is attached hereto as Attachment G);
  - (b) the mandatory Internal Revenue Service Publication 1075 term at [https://www.vita.virginia.gov/uploadedFiles/VITA\\_Main\\_Public/SCM/Mandatory\\_IRS\\_Pub\\_1075\\_for\\_FTI\\_data.pdf](https://www.vita.virginia.gov/uploadedFiles/VITA_Main_Public/SCM/Mandatory_IRS_Pub_1075_for_FTI_data.pdf) (a copy of which, current as of the Agreement Effective Date, is attached hereto as Attachment H).

The contractual provisions found in the URLs and other VITA Rules are subject to change. If a change is made, a new effective date will be noted. Supplier is advised to check the provisions periodically. Changes in VITA Rules will be communicated to Supplier Personnel by such means as are generally used by VITA to disseminate or make available such information to its employees or contractors.

## 15.6 Virus and Disabling Code

- 15.6.1 The Supplier represents and warrants that other than to impair the functionality of Supplier provided Equipment or Software in order to prevent its unlicensed use and/or transfer, which Supplier shall not use for any other purpose, the Supplier will not knowingly include (a) any routine intended to cause Work Product or VITA's Systems to malfunction or fail to perform; (b) any computer code designed to disrupt, disable, harm or otherwise interfere with or impede in



any manner (including aesthetic disruptions and distortions) the operation of Work Product or VITA's Systems, or any other associated software, firmware, hardware, computer system, platform or network, or any other harmful component (including, but not limited to, any cancelbot, denial of service routines, "Trojan horse" or any other contamination or destructive feature) (any such code described in this clause (b) being a "**Virus**"); and (c) any code or component that would permit access by the Supplier to cause such disablement or impairment specified in clauses (a) and (b) above, or any other similar harmful, malicious or hidden procedures, routines or mechanisms that would cause VITA Data and VITA's Systems to cease functioning or cause damage to or corrupt data, storage media, program or communications, or otherwise interfere with the operation of VITA's Systems. Notwithstanding any rights granted under this Agreement or at law, Supplier hereby waives under any and all circumstances any right it may have to exercise use of electronic means for any license termination rights. Supplier agrees that VITA may pursue all remedies provided under law or in equity in the event of a breach or threatened breach of this Section, including injunctive relief.

- 15.6.2 Further, without limiting any more specific obligations in this Agreement, the Supplier will use all commercially reasonable efforts to prevent a Virus from entering VITA Systems through the Supplier's Systems, including by (a) monitoring all the Supplier Facilities and the Supplier's Systems that have access to VITA Systems or VITA Data or that otherwise are used to perform the Services, (b) using industry standard Virus software and devices to screen all software prior to delivery to VITA (including by way of access) to prevent the introduction of any Viruses, (c) remediating any failures in an anti-virus program, (d) updating signatures, and (e) addressing any failures of software caused either by the Virus or anti-virus software. Supplier also will guard against denial of service attacks. If a Virus is found to have been introduced to VITA's Systems through the Supplier's Systems, then the Supplier will, at no additional charge to VITA and in addition to any other remedies that may be available to VITA, assist in eradicating the Virus and reversing its adverse effects and, if the Virus causes a loss of VITA Data or operational efficiency, to assist VITA in mitigating and reversing such losses.

**15.7 Warranty of Interoperability.** The Supplier represents and warrants that the software, equipment and Systems used by or on behalf of the Supplier to provide the Services will be fully interoperable with the applicable software, equipment and Systems of the Managed Environment.

**15.8 Supplier Additional Representations and Warranties.** In addition to the foregoing representations and warranties, the Supplier hereby further represents and warrants the following (and, without in any way limiting or superseding its obligations or responsibilities under Section 5.5.3, will receive from its Subcontractors the same representations and warranties):

- 15.8.1 Neither the Supplier nor any of its Affiliates or agents or any Supplier Personnel has given or offered to give, and do not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, service, commissions, payments, kickbacks, lavish or extensive entertainment or other inducements of more than minimal value to a public servant or to any employee or agent of VITA or any other Customer in connection with this Agreement, except in strict compliance with applicable Laws (including Executive Orders). The Supplier also acknowledges that the giving of any such payments, gifts, entertainment or other thing of value is strictly in violation of VITA Rules and the Code of Virginia on conflicts of interest, and may result in the cancellation of this Agreement and other existing and future contracts between the Parties, as well as consequences under applicable Laws.
- 15.8.2 Neither the Supplier nor any of its Affiliates, or agents or any Supplier Personnel has accepted or will accept anything of value, or an inducement or gift that would provide a financial gain,

advantage or benefit, based on an understanding that the actions of the Supplier, any such Affiliates, agents or Supplier Personnel on behalf of VITA or other Customers, would be influenced thereby and that its proposals prior to execution of this Agreement were arrived at independently, without consultation, communication or agreement with any other proposer for the purpose of restricting competition, the prices quoted were not knowingly disclosed by the Supplier to any other proposer and no attempt was made by the Supplier to induce any other person or Entity to submit or not to submit a proposal for the purpose of restricting competition.

- 15.8.3 Neither the Supplier nor any of its Affiliates or agents or any Supplier Personnel has received any gift or payment from VITA or other Customer, or any of their employees, for participating in the preparation of this Agreement and that neither the Supplier nor any of its Affiliates, agents or Supplier Personnel has, will have, or will acquire, any contractual, financial, business or other interest or advantage, direct or indirect, including the acceptance of another contract with VITA, that would conflict in any manner or degree, or would impair the Supplier's independent judgment, with the Supplier's performance of its duties and responsibilities under this Agreement or otherwise create an appearance of impropriety with respect to this Agreement; and the Supplier will promptly inform VITA of any such interest that may be incompatible with the interests of VITA.
- 15.8.4 Neither the Supplier nor any of its Affiliates or agents or any Supplier Personnel has paid or agreed to pay any person or Entity, other than bona fide employees working solely for the Supplier or such Affiliates, agents or any Subcontractors, any fee, commission, percentage, brokerage fee, gift or any other consideration, that is contingent upon or resulting from the award or execution of this Agreement.
- 15.8.5 The Supplier will not assign Services to any Supplier Personnel who are not authorized to work in the location from where they perform such Services. If any Supplier Personnel performing any of the Services are discovered to not be so authorized, the Supplier will immediately replace such personnel.
- 15.8.6 As of the Effective Date, the Supplier is not delinquent in the payment of any franchise tax, sales and use tax, or any other tax owed the Commonwealth and acknowledges that, if this certification is inaccurate, then VITA may, upon notice to the Supplier, terminate this Agreement, in whole or in part, for material breach, as of the termination date specified in the notice and withhold any or all payments hereunder up to the amount of such taxes owed to the Commonwealth.
- 15.8.7 Neither the Supplier nor any of its Affiliates or agents or any Supplier Personnel, has used or will use the authority provided or to be provided under this Agreement, or any VITA Confidential Information acquired in connection with this Agreement, to improperly obtain financial gain, advantage or benefit for the Supplier or any of its Affiliates or agents or any Supplier Personnel.
- 15.8.8 The Supplier will comply with all Commonwealth Laws related to vendor certifications as may be in effect as of the Effective Date and as may be imposed during the Term, upon notice from VITA.
- 15.8.9 None of the Supplier or any Subcontractor is suspended or debarred from doing business with the federal government.
- 15.8.10 As of the Effective Date, the Supplier is not listed in the prohibited vendors list authorized by federal Executive Order Number 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of the Treasury, Office of Foreign Assets Control.

15.8.11 Any lobbyist employed by the Supplier is in compliance with the requirements of all applicable Law.

15.8.12 The Supplier, in the performance of the Services and its other contractual obligations hereunder, will comply with the Code of Virginia, including the Virginia State and Local Conflicts of Interest Act.

**15.9 Compliance with the Federal Lobbying Act.** Supplier's signed certification of compliance with 31 USC 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder (together, the "**Lobbying Act**") is incorporated as **Attachment F (Certification Regarding Lobbying)**.

**15.10 No Other Warranties.** EXCEPT AS SET FORTH IN THIS AGREEMENT INCLUDING THIS **SECTION 1515 (REPRESENTATIONS AND WARRANTIES)**, NEITHER VITA NOR SUPPLIER, AS APPLICABLE, MAKES ANY WARRANTIES TO THE OTHER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY SERVICES OR DELIVERABLES PROVIDED HEREUNDER, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED.

## **16. DATA SECURITY AND PROTECTION**

### **16.1 Compliance with Data Privacy and Data Protection Laws, Regulations and Policies**

16.1.1 In carrying out its activities under this Agreement, each Party will observe and comply with all applicable data privacy and data protection Laws. In addition, when accessing or handling any VITA Data that contains Personally Identifiable Information or sensitive data, the Supplier will comply with VITA Rules relating to the use and disclosure of such information.

16.1.2 At the reasonable request of VITA, the Supplier shall execute a Business Associate Agreement with VITA in the form reasonably proposed by VITA.

**16.2 VITA Data, Generally.** As between the Parties, VITA Data will be and remain the property of VITA or the applicable Customers. The Supplier may not use VITA Data for any purpose other than to render the Services. No VITA Data will be sold, assigned, leased or otherwise disposed of to third parties or commercially exploited by or on behalf of the Supplier (or any of its Subcontractors or Supplier Personnel). Neither the Supplier nor any of its Subcontractors or Supplier Personnel may possess or assert any lien or other right against or to VITA Data. Without limiting the generality of the foregoing, (a) the Supplier may use VITA Data only as strictly necessary to render the Services and must restrict access to such information to Supplier Personnel on a strict need-to-know basis, and (b) the Supplier will not download, copy, transmit or make available any VITA Data to any third party, except as expressly permitted by this Agreement.

### **16.3 Data Security**

16.3.1 **Risk of Data Loss.** When VITA Data is in the Supplier's possession or under the Supplier's control and an event occurs that prevents or hinders the access to or reliable use of such VITA Data ("Data Loss Event"), the Supplier will re-create or restore such data immediately, or in any case, as soon as reasonably practicable, to the last scheduled back-up applicable to such VITA Data in accordance with the Supplier's responsibilities hereunder. Any such re-creation or restoration will be at the Supplier's expense. However, VITA shall reimburse the Supplier for its reasonable costs and expenses associated with such data recreation or restoration if the Data Loss Event was not caused by Supplier's acts or omissions.

### 16.3.2 Data Security Program

- (a) The Supplier will maintain and comply with a comprehensive Security Program that conforms to (a) VITA Rules, including all VITA Rules comprising the then-current Commonwealth security procedures, including those found at: <https://www.vita.virginia.gov/resources/vita-rules/>, or successor URL(s), and (b) the Federal Information Security Management Act (or FISMA), 44 U.S.C. § 3541, et seq., and any other applicable Laws, and (c) **Exhibit 2.1 (Description of Services)**. The Supplier acknowledges and agrees that certain Customers may be legally prohibited from disclosing or allowing access to certain VITA Data, including disclosures to and access by VITA, other Customers and the Supplier. The content and implementation of the Security Program and associated technical, organizational and security measures will be fully documented in the Services Management Manual, including the process Customers will follow to identify VITA Data they are legally prohibited from disclosing and the confidentiality requirements of Customers.
- (b) Supplier shall comply with all restrictions on VITA Data location (in transit and at rest) provided in **Exhibit 2 (Description of Services and Solution)** or otherwise stipulated in VITA Rules.
- (c) To the extent the Supplier removes VITA Data from any media that is taken out of service that is under the Supplier's control, the Supplier will destroy or securely erase such media in accordance with the Services Management Manual and VITA Rules. Under no circumstances will the Supplier use or re-use media on which VITA Data has been stored to store data of any other customer of the Supplier or to deliver data to a third party, including another Supplier customer, unless such VITA Data has been securely erased in accordance with the Services Management Manual and VITA Rules.

16.3.3 Data Corrections. The correction of any errors or inaccuracies in or with respect to VITA Data will be performed by the Party that has operational responsibility for inputting such VITA Data into the applicable System.

16.3.4 Backups and Availability of VITA Data. VITA will have the right to establish backup security for any VITA Data and to keep backup files for such VITA Data in its possession if it chooses. The Supplier will provide VITA with downloads of VITA Data, as requested or directed by VITA, to enable VITA to maintain such backup copies. VITA Data will be returned or otherwise provided to VITA (and the other Customers), upon request, in the form and format as requested by VITA (or such other Customers). The Supplier will never refuse for any reason, including VITA's material breach of this Agreement, to provide VITA (and such Customers) with the VITA Data in accordance with this **Section 16.3.4 (Backups and Availability of VITA Data)**.

## 16.4 Security Incident

16.4.1 For any Security Incident caused by the negligent acts or omissions of the Supplier, the Supplier will be liable and will pay for any associated expenses, including the cost of any required legal compliance (e.g., notices required by applicable Law), the expenses related to the investigation and remediation of the Security Incident, and any identity protection services (including those described in **Section 21.2.5**).

16.4.2 The Supplier will address and respond to any Security Incident in accordance with **Exhibit 2 (Description of Services and Solution)** and VITA Rules.



**16.5 Security Testing.** The Supplier will conduct periodic reviews and tests to verify compliance with and the effectiveness of the Supplier's compliance with the data security requirements under this Agreement. As part of such testing, the Supplier will have an independent, regionally recognized third party conduct penetration tests addressing network and Systems risks on all of the Supplier's Systems used to provide the Services, which tests will be performed on an annual basis as well as following any significant infrastructure or application upgrades and modifications. The Supplier will: (a) provide VITA with copies of the plans pursuant to which any of such security related tests will be conducted (as such test relates to the Services) for review and approval of VITA; (b) make any changes required by VITA; and (c) address any comments made by VITA.

## **17. CONFIDENTIALITY**

**17.1 Confidential Information.** "Confidential Information" means non-public proprietary or trade secret information of VITA, Supplier, or a Customer, whether the information is in written, graphic, machine readable or other tangible form, and which at the time of disclosure to any other Party is either (i) marked as being "Confidential" or "Proprietary"; (ii) Personally Identifiable Information, including information about VITA's employees, contractors, and customers, or Sensitive Data, including PHI; (iii) in the case of VITA, Confidential Information also includes any (a) information to which the Supplier has access in VITA Facilities or VITA's Systems, (b) Work Product and information pertaining to the Work Product, (c) VITA Data, VITA Software, and systems access codes, (d) information concerning VITA's and any other Customer's operations, plans, employees, contractors or third party suppliers; or (iv) information that is protected by statute or other applicable law.

The term "Confidential Information" shall not include information that is:

- i. in the public domain through no fault of the receiving Party or of any other person or entity that is similarly contractually or otherwise obligated;
- ii. obtained independently from a third-party without an obligation of confidentiality to the disclosing Party and without breach of this Contract;
- iii. developed independently by the receiving Party without reference to the Confidential Information of the other Party; or
- iv. required to be disclosed under The Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) or similar laws or pursuant to a court order.

**17.2 Treatment and Protection.** Each Party shall (i) hold in strict confidence all Confidential Information, (ii) use the Confidential Information solely to perform or to exercise its rights under this Contract, and (iii) not transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any third-party. However, a Customer may disclose the Confidential Information as delivered by Supplier to subcontractors, contractors or agents that are bound by non-disclosure agreements. Each Party shall take the same measures to protect against the disclosure or use of the Confidential Information as it takes to protect its own Confidential Information (but in no event shall such measures be less than reasonable care). The Supplier will be responsible for all acts and omissions of the Supplier Personnel and any third party to whom the Supplier permits access to Confidential Information. If any authorized disclosure, loss of, or inability to account for any Confidential Information occurs, the receiving Party will promptly notify the furnishing Party and will cooperate and take such actions as may be necessary or reasonable as requested by the furnishing Party to minimize the violation and any damage resulting therefrom.

**17.3 Return or Destruction.** Within ten (10) days of termination or expiration of this Contract or upon the earlier request of VITA, the Supplier shall, at its own expense, (a) promptly return to VITA or the furnishing Customer if so directed by VITA all tangible Confidential Information (and all copies thereof except the record

required by law) of VITA or the furnishing Customer, or (b) upon written request from VITA, destroy the Confidential Information and provide VITA with written certification of such destruction. In addition, within ten (10) days of termination, the Supplier shall cease all further use of such Confidential Information, whether in tangible or intangible form.

Where a Party seeks return of Confidential Information during the term of this Agreement, the other Party may keep (i) any Confidential Information which it has a license to continue using, (ii) Confidential Information in the files of its legal counsel, for record purposes, and (iii) archival copies as may be necessary to comply with records retention policies. Additionally, a Party will have no obligation to destroy any Confidential Information that is subject to a claim, dispute, lawsuit, or subpoena.

VITA and other Customers shall retain and dispose of the Supplier's Confidential Information in accordance with the Commonwealth of Virginia's records retention policies or, if the Customer is not subject to such policies, in accordance with the Customer's own records retention policies.

**17.4 Third Party Information.** If the Supplier has (or might have) access to confidential information of any third party suppliers of VITA in connection with the Supplier's Transition Assistance, support or other Services, then upon VITA's request, the Supplier will enter into reasonable confidentiality agreements directly with any such third parties.

**17.5 Confidentiality Statement.** All Supplier personnel, contractors, agents, and subcontractors performing Services pursuant to this Agreement shall be required to sign a confidentiality statement or non-disclosure agreement with provisions no less restrictive than the provisions of this Section 17. Any violation of such statement or agreement shall be deemed a breach of this Agreement and may result in termination of the Agreement or any order or SOW issued hereunder.

**17.6 Health Insurance Portability and Accountability Act.** The Supplier agrees to comply with all applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and, as applicable to the performance of this Agreement or to any SOW or order issued hereunder. The Supplier shall:

- i. Not use or further disclose protected health information (PHI) other than as permitted or required by the terms of this Agreement or any SOW or order issued hereunder or as required by law;
- ii. Use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this Agreement;
- iii. Report to the Customer any use or disclosure of PHI not provided for by this Agreement;
- iv. Mitigate, to the extent practicable, any harmful effect that is known to the Supplier of a use or disclosure of PHI by the Supplier or its employees, agents or subcontractors in violation of the requirements of this Agreement;
- v. Impose the same requirements and restrictions contained in this provision on its employees, subcontractors and agents performing on this Agreement;
- vi. Provide access to PHI contained in its records to Customer, in the time and manner designated by Customer, or at the request of Customer, to an individual in order to meet HIPAA access;
- vii. Make available PHI in its records to Customer for amendment and incorporate any amendments to PHI in its records at Customer's request;

## **18. INSURANCE**

**18.1 General.** All insurance policies used to satisfy the requirements of this **Section 18 (Insurance)** will be placed with a U.S. insurance company that is admitted to do business in the Commonwealth and which has an

A.M. Best rating of A- or better and a Financial Size Category of Size IX or better (or, if such ratings are no longer available from A.M. Best, which has a comparable rating from a recognized insurance rating agency).

**18.2 Types and Amounts of Coverage.** The Supplier has, and agrees that during the Term and for a period of at least six years after it will maintain in force the insurance types and amounts located at: [http://www.vita.virginia.gov/uploadedfiles/VITA\\_Main\\_Public/scm/StatutorilyMandatedTsandCs.pdf](http://www.vita.virginia.gov/uploadedfiles/VITA_Main_Public/scm/StatutorilyMandatedTsandCs.pdf), and the following additional types and amounts of insurance:

- 18.2.1 Property Insurance, including Extra Expense and Business Income coverage, for all risks of physical loss of or damage to business personal property or other property of the Supplier and its Subcontractors (including Affiliates) used in performing the Services, including electronic data processing equipment. If the Supplier or any of its Subcontractors will have possession, care, custody or control of any buildings, business personal property or other property of VITA (or another Customer) pursuant to this Agreement, such insurance will include coverage for such property and will be endorsed to include VITA, the other Customers, and their officers and directors as additional insureds (and loss payees if any such VITA or other Customer property is revenue-generating property). In all cases, such insurance will have minimum limits, per loss and in the aggregate, adequate to cover insured property on a full replacement cost basis and a business interruption limit of not less than \$2,000,000;
- 18.2.2 Commercial Fidelity and Crime Insurance with not less than a \$5,000,000 each loss limit, including coverage for third party legal liability and Computer Fraud;
- 18.2.3 Errors and Omissions Liability Insurance with a minimum limit of \$20,000,000 per claim and as an annual aggregate, which can be satisfied by primary or excess professional limits, providing coverage for errors and omissions arising out of the performance or non-performance of the Services by the Supplier and/or its Subcontractors. Such insurance will be endorsed to include VITA, the other Customers, and their officers and directors as additional insureds;
- 18.2.4 Excess or Umbrella Liability Insurance coverage on a follow-form basis, with a minimum limit of \$20,000,000 per occurrence and \$20,000,000 as an annual aggregate; and
- 18.2.5 Cyber Security Liability Insurance coverage in the minimum amount of \$30,000,000 per claim and in a form, on terms of coverage, and with an issuer(s) reasonably satisfactory to VITA.

### 18.3 Terms of Coverage

- 18.3.1 All insurance coverage required herein will provide primary coverage, without contribution from other insurance, for all losses and damages caused by the perils or causes of loss covered thereby. The Supplier agrees to have included in each of the insurance policies required herein a waiver of the insurer's rights of subrogation against VITA, any other indemnified parties under this Agreement, and their respective insurers, to the extent permitted by law. VITA, the other Customers, and their officers and directors will be added by endorsement or included under a blanket additional insured endorsement as additional insureds on a primary and non-contributory basis.
- 18.3.2 The Supplier will be responsible for all deductibles and retentions with regard to the above-described insurance. Each policy described in **Section 18.2 (Types and Amounts of Coverage)** will include provisions generally considered standard (according to the U.S. Insurance Services Office standard forms) for the type of insurance involved, including the loss payable (as applicable above) and waiver of subrogation clauses and deductible and/or self-insured retention amounts.

To the extent any coverage is written on a claims-made basis, it will have a retroactive date no later than the Effective Date of this Agreement and, notwithstanding the termination or expiration of this Agreement, will allow for reporting of claims until the applicable limitation of actions period has expired, either directly or through 'tail' coverage for a period not less than six years after termination or expiration of this Agreement.

- 18.3.3 Within 30 days after the execution date of this Agreement or any required insurance policy, or the date of any new or renewed policy, and from time to time during the Term upon VITA's request, the Supplier will furnish VITA with a current certificate of insurance showing coverage in at least the amounts required by **Section 18.2 (Types and Amounts of Coverage)**. Certificates of insurance for the coverages set forth in **Section 18.2 (Types and Amounts of Coverage)** will reflect evidence each coverage is maintained for the Supplier and the Supplier's ultimate corporate parent if other than the Supplier. Such certificates of insurance will include evidence of VITA's additional insured and loss payee status on the policies for which such status is required as set forth in **Section 18.2 (Types and Amounts of Coverage)**.
- 18.3.4 The Supplier will provide at least 30 days' notice to VITA prior to any cancellation or material reduction to coverage afforded to VITA (except that 10 days' notice to VITA is required in the case of non-payment of any premium).
- 18.3.5 If during the Term any insurer fails to meet or exceed the A.M. Best rating required by **Section 18.1 (Insurance, General)**, the Supplier will, from the time of the Supplier's knowledge thereof, endeavor to procure within 60 days insurance from an alternative insurer who does meet or exceed such rating and to provide updated certificates of insurance to VITA.
- 18.3.6 In the case of loss or damage or other event that requires notice or other action under the terms of any insurance coverage described above, the Supplier will be solely responsible for taking such action. The Supplier will provide VITA with contemporaneous notice and with such other information as VITA may request regarding the event.
- 18.3.7 The Parties do not intend to shift all risk of loss to insurance. The Supplier's obligation to maintain insurance coverage in specified amounts will not act as a limitation on any other liability or obligation which the Supplier would otherwise have under this Agreement. Similarly, the naming or endorsement of VITA as additional insured is not intended to be a limitation of the Supplier's liability under this Agreement and will in no event be deemed to, or serve to, limit the Supplier's liability to VITA to available insurance coverage or to the policy limits specified above, nor to limit VITA's rights to exercise any and all remedies available to VITA under this Agreement, at law or in equity.

#### **18.4 Subcontractor Insurance**

- 18.4.1 The Supplier will ensure that all Subcontractors, if any, maintain insurance coverages described above naming or endorsing the Supplier as an additional insured or, alternatively, the Supplier will ensure that all Subcontractors, if any, are endorsed as additional insureds on the Supplier's insurance described in **Section 18.3 (Terms of Coverage)**.
- 18.4.2 The Supplier agrees to, and will cause each of its Subcontractors to, arrange for their respective insurers to waive all rights of recovery against VITA for any deductibles and/or self-insured retentions it may have on its insurance policies. The Supplier agrees, and will cause each of its Subcontractors to, arrange for their respective insurers to waive all rights of subrogation against VITA in advance of any loss.



- 18.4.3 If the insurance coverages or coverage limits maintained by any Subcontractor are less than those required under this **Section 18.4 (Subcontractor Insurance)**, the Supplier's insurance will respond as excess and difference in conditions policies with respect to the Subcontractor's policies to meet the requirements of this **Section 18.4 (Subcontractor Insurance)**.

## **19. INDEMNIFICATION**

**19.1 Indemnification by the Supplier.** The Supplier agrees to indemnify, defend and hold harmless each VITA Indemnitee from and against any and all Losses suffered or incurred by any of them arising from, in connection with, or based on any of the following, whenever made:

- 19.1.1 Any Claim relating to the Supplier's alleged failure to observe or perform any duties or obligations to be observed or performed by the Supplier on or after the Effective Date relating to VITA resources referenced or identified in **Section 7 (Use of VITA Resources)**, if any, that are assigned to the Supplier or for which the Supplier has assumed financial, administrative or operational responsibility or used in the provision of the Services;
- 19.1.2 Any Claim relating to an alleged breach of the Supplier's obligations under **Sections 4.3 (Taxes)**, **15.1 (Mutual Warranties)**, **15.3 (Title, Required Rights and Non-Infringement)**, **15.5 (Compliance with Laws and VITA Rules)**, **15.6 (Virus and Disabling Code)**, **15.8 (Supplier Additional Representations and Warranties)**, **16 (Data Security and Protection)** or **16 (Confidentiality)**;
- 19.1.3 Any Claim for death or bodily injury, or the damage, loss or destruction of real or tangible personal property of any third party (including employees of VITA or the Supplier or their respective subcontractors) brought against a VITA Indemnitee alleged to have been caused by the acts or omissions of the Supplier, Supplier Personnel or anyone else for whose acts the Supplier is responsible;
- 19.1.4 Any Claim by any Supplier Personnel or Subcontractor, including based on any aspect of the engagement or employment by the Supplier or Subcontractors of Supplier Personnel, or the termination of such employment or engagement (including claims related to non-payment of wages, discrimination/harassment, unemployment or workers compensation benefits, employee benefits, and any other claims concerning the terms and conditions of employment under any federal, state or local Law governing employment) regardless of whether the claimant claims or is deemed by a court to be an employee or joint employee of VITA (it being expressly agreed between the Supplier and VITA that such individuals are not intended to be employees of VITA);
- 19.1.5 Any Claim with respect to the Supplier's use of any third party equipment, software or services under any VITA Third Party Contracts made available by VITA to the Supplier or the Supplier's Subcontractors to the extent the loss results from a breach by the Supplier or the Supplier Subcontractors of (a) the applicable third party software license agreement, lease agreement or VITA Third Party Contract, or certain provisions thereof, which have been provided to the Supplier, or (b) any other reasonable restrictions required by VITA relating to VITA's third party equipment, software or VITA Third Party Contracts, which restrictions are provided in writing to the Supplier;
- 19.1.6 Any Claim with respect to any criminal misconduct, willful misconduct or negligence by the Supplier or Supplier Personnel; or
- 19.1.7 Any Claim that would have been covered under insurance policies that the Supplier is required to maintain pursuant to **Section 18 (Insurance)** solely to the extent of the Supplier's failure to procure such required insurance.

**19.2 Infringement Claims.** If any item used by the Supplier to provide the Services or which is provided by the Supplier to VITA under this Agreement, or any Work Product becomes, or in the Supplier's reasonable opinion is likely to become, the subject of an infringement or misappropriation Claim, the Supplier will, in addition to indemnifying VITA Indemnitees as provided in this **Section 19 (Infringement Claims)** and without limiting any other rights and remedies VITA may have under this Agreement, and at law or equity: (a) promptly at the Supplier's expense secure the right to continue using the item or Work Product, or (b) if this cannot be accomplished with commercially reasonable efforts, then at the Supplier's expense, replace or modify the item or Work Product to make it non-infringing or without misappropriation, while not degrading performance, functionality, or quality, increasing VITA costs, or disrupting VITA's business operations.

### **19.3 Indemnification Procedures**

**19.3.1 Notice.** Promptly after receipt by a VITA Indemnitee of notice of the commencement or threatened commencement of any action, proceeding or other claim by a third party involving a claim in respect of which the VITA Indemnitee may seek indemnification from the Supplier, the VITA Indemnitee will notify the Supplier of such claim in writing and provide to the Supplier all reasonably available information requested. No failure to so notify the Supplier will relieve the Supplier of its obligations under this Agreement except to the extent that the Supplier can demonstrate damages or prejudice attributable to such failure. Within thirty (30) days following receipt of notice from the VITA Indemnitee relating to any claim, but no later than ten (10) days before the date on which any response to a complaint or summons is due ("**Notice Period**"), the Supplier will notify the VITA Indemnitee in writing if the Supplier elects to be involved in the defense and settlement of that claim ("**Notice of Election**"). The Supplier's failure to elect to be involved in the claim will not relieve the Supplier of its responsibility for any Losses related to such claim.

**19.3.2 Procedure Following Notice of Election.** If the Supplier delivers a Notice of Election within the required Notice Period, the Supplier will be involved in the defense and settlement of such claim; provided that (i) as required by Virginia law, including § 2.2-510 of the Code of Virginia, selection of counsel shall be approved by the Attorney General of Virginia and (ii) the Supplier will obtain the prior written approval of the VITA Indemnitee, the Attorney General of Virginia, and all other persons as required by Virginia law before entering into any settlement of such claim or ceasing to defend against such claim.

**19.3.3 Procedure Where No Notice of Election Is Delivered.** If the Supplier does not deliver a Notice of Election within the Notice Period, the VITA Indemnitee may proceed to defend the claim in such manner as it may reasonably deem appropriate, at the cost and expense of the Supplier. The Supplier will promptly reimburse the VITA Indemnitee for all Losses related to such claim. The VITA Indemnitee may settle any such claim without the consent of the Supplier. If it is determined that the Supplier failed to defend a claim for which it was liable, the Supplier will not be entitled to challenge the amount of any settlement or compromise paid by the VITA Indemnitee.

## **20. REMEDIATION PLANS AND STEP IN RIGHTS**

**20.1 Triggers for a Remediation Plan.** If (a) the Supplier fails to perform any significant Function, including in connection with a Force Majeure Event, or (b) upon the occurrence of anything else that, pursuant to this Agreement (including **Exhibit 3 (Reporting and Service Level Management)**), triggers VITA's right to require the Supplier to produce a remediation plan, VITA may require the Supplier to provide a draft of a remediation plan. In such a case, the Supplier will prepare and deliver within two (2) Business Days after receiving VITA's request (or such other time period as to which VITA and the Supplier may agree) such a plan ("**Remediation Plan**") for VITA's review and approval.

**20.2 Remediation Plan Contents.** A Remediation Plan must specify in detail reasonably satisfactory to VITA:

- 20.2.1 the process for identifying the cause of the failure or incident the Remediation Plan is intended to remedy or prevent;
- 20.2.2 where remedy of the failure or incident is possible, the actions that will be taken by the Supplier to effect that remedy;
- 20.2.3 the actions that will be taken by the Supplier to prevent the same or a substantially similar failure or incident from occurring in the future;
- 20.2.4 the timeline for implementing the Remediation Plan; and
- 20.2.5 any other content VITA may reasonably request.

**20.3 VITA's Response to Draft Remediation Plan.**

After receiving the draft Remediation Plan, VITA may inform the Supplier that it approves the draft Remediation Plan or comment on the draft Remediation Plan, in which case the Supplier will (a) at the reasonable request of VITA, meet to discuss VITA's comments; and (b) within two (2) Business Days after the meeting, or receipt of VITA's comments where no meeting is required by VITA, prepare a revised Remediation Plan addressing VITA's comments and submit it for VITA's review and, as VITA deems appropriate, further comment or approval.

**20.4 Implementation of Remediation Plan.** The Supplier will only implement a Remediation Plan if VITA has approved it and then in the form approved by VITA.**20.5 Exercise of Step In Rights**

- 20.5.1 If the Supplier fails to comply in a timely manner with the Supplier's obligations regarding the creation or implementation of a Remediation Plan (including the provision of the applicable Services once implemented), or if the Supplier does not produce a Remediation Plan acceptable to VITA (after having had one chance to revise it pursuant to **Section 0**), VITA may by giving written notice to the Supplier, in addition to its other remedies at law and in equity, take over the creation and/or implementation of the Remediation Plan, the rectification of the failure or incident, and/or the provision of the applicable Functions, or otherwise authorize its designee (including other Integrated Suppliers) to do the same (each a "**Step In**"), which, at VITA's sole discretion, may or may not include the Supplier's involvement.
- 20.5.2 If VITA or its designee Steps In, the Supplier must cooperate fully with VITA and its personnel and provide, at no additional charge to VITA, all assistance reasonably required by VITA, including:
  - (a) providing access to all relevant equipment, premises and software under the Supplier's (or a Subcontractor's) control as required by VITA (or its designee) in connection with the Step In; and
  - (b) ensuring that Supplier Personnel normally engaged in the provision of the Services are available to VITA (or its designee) to provide any assistance VITA may reasonably request.
- 20.5.3 VITA's right to Step In will end, and VITA must hand back the responsibility to the Supplier, when the Supplier demonstrates to VITA's reasonable satisfaction that the Supplier is capable of



resuming provision of the affected Service(s) in accordance with the requirements of this Agreement and that the occurrence giving rise to the Step In will not recur.

20.5.4 Upon presentment, the Supplier will reimburse VITA for the following costs incurred by VITA in exercising its Step In rights, to the extent in excess of what would have been the Supplier's Charges for the Services replaced by the Step In ("**Step In Costs**"), and VITA will not be responsible to pay the Supplier's Charges for the Services that were replaced by the Step In:

- (a) any reasonable payments VITA makes to a third party in connection with the provision of services related to the Step In; and
- (b) the reasonable and proven additional internal costs and expenses incurred by VITA as a result of or in connection with VITA exercising its right to Step In.

**20.6 Interplay with Other VITA Rights and Remedies.** For purposes of clarity, VITA's exercise of any of its rights in this **Section 20 (Remediation Plans and Step In Rights)** does not prevent VITA from concurrently (or later) exercising other rights and remedies that it may have under this Agreement (or at law or in equity).

## **21. LIABILITY**

### **21.1 Liability Cap**

21.1.1 Supplier's liability with respect to this Agreement shall be limited to direct damages in the amount of \$30 million, in the aggregate. Supplier agrees that it is fully responsible for all acts and omissions of Supplier Personnel, including their gross negligence or willful misconduct.

21.1.2 The limitations of liability set forth in **Section 21.1.1** will not apply to any of the following: (a) any intentional or willful misconduct, fraud or negligence of Supplier or any Supplier Personnel; (b) Claims for bodily injury, including death, and real and tangible property damage, (c) Claims and Losses that are the subject of indemnification by Supplier under this Agreement, including pursuant to **Section 19 (Indemnification)**; (c) damages and costs associated with the Supplier's obligations under **Section 16 (Data Security and Protection)**; (d) damages attributable to Supplier's breach of its obligations with respect to Confidential Information; (e) damages attributable to the improper or wrongful termination of this Agreement or abandonment of the Services by the Supplier or the Supplier's refusal or failure to provide Transition Out Assistance as required by this Agreement; or (f) damages occasioned by Supplier's breach of its obligations under this Agreement to comply with applicable Laws.

21.1.3 Service Level Credits, Deliverable Credits, as well as any other credits that are expressly creditable under this Agreement (including pursuant to **Exhibit 3 (Reporting and Service Level Management)**), will not limit or otherwise reduce (a) the foregoing Liability Cap or (b) any other rights or remedies that VITA may have available to it under this Agreement, including termination rights and rights to recover damages.

**21.2 Stipulations As To Recoverable Damages.** For purposes of clarity, and without limiting the Supplier's liability for recoverable damages under this Agreement, the Supplier hereby agrees and stipulates that, notwithstanding anything in this Agreement or applicable legal precedent to the contrary, the types of costs and expenses listed below in this **Section 21.2 (Stipulations As To Recoverable Damages)** will be deemed to be damages that are recoverable under this Agreement, to the extent incurred by VITA or another Customer as a result of the failure of Supplier (or entities or persons for whom Supplier is responsible) to fulfill its obligations

under and in accordance with this Agreement. The recovery of these damages will be subject to the limitations in **Section 21.1.1** unless otherwise exempted from such limitations under **Section 21.1.2**.

**21.2.1 Step In Costs;**

**21.2.2** Costs and expenses incurred by VITA (including documented internal costs as well as amounts paid to third parties) to correct errors or deficiencies in the Services or Deliverables, provide a workaround for the Services or Deliverables, and/or acquire substitute services conforming to this Agreement as a result of any failure of the Supplier to provide the Services or Deliverables as required by this Agreement;

**21.2.3** Costs and expenses incurred by VITA (including documented internal costs as well as amounts paid to third parties) to correct, recreate, and/or reload VITA Data lost or damaged as a result of the Supplier's breach of this Agreement or as a result of negligence or willful misconduct by the Supplier (or an entity or person for whom the Supplier is responsible);

**21.2.4** Fines, regulatory assessments, penalties, interest, and similar amounts that VITA, any other Customer or the Commonwealth incurs or owes any Governmental Authority, or any losses of reimbursements to VITA, any other Customer or the Commonwealth from any Governmental Authority that may occur, in each case to the extent in connection with the Supplier's failure to perform or comply in accordance with this Agreement; and

**21.2.5** Costs and expenses incurred for identity protection services, including notification letters, forensic analysis, credit monitoring services, identity theft insurance, reimbursement for credit freezes, fraud resolution services, identity restoration services, toll free information services for affected individuals and any similar service that corporate entities that maintain or store Personally Identifiable Information make available to individuals who are affected by the unauthorized use or disclosure of their Personally Identifiable Information.

**21.3 Force Majeure**

**21.3.1** No Party will be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused by a Force Majeure Event. For avoidance of doubt, strikes or other labor unrest will not constitute a Force Majeure Event.

**21.3.2** In such event, the non-performing Party will be excused from further performance or observance of the obligations so affected for as long as such circumstances prevail and such Party continues to use commercially reasonable efforts to recommence performance or observance without delay. Any Party so delayed in its performance will immediately notify the Party to whom performance is due by telephone (to be confirmed by email as soon as possible after the inception of such delay) and describe at a reasonable level of detail the circumstances causing such delay. To the extent the provision of the Services or any part thereof is prevented or materially affected by a Force Majeure Event, VITA's obligation to pay Charges hereunder will accordingly be reduced by an equitable amount (which in the case of total suspension of the Services would be an amount equal to the total Charges hereunder for the period of suspension).

**21.3.3** If any Force Majeure Event substantially prevents, hinders or delays performance of the Services, then the Supplier will use commercially reasonable efforts to identify another Supplier location from which it might provide the Services without interference from such event, and if VITA requests, the Supplier will assist VITA in identifying an alternate source that may be able to provide the Services to VITA during the time of such Force Majeure Event. If any Force Majeure

Event substantially prevents, hinders or delays performance of the Services reasonably identified by VITA as critical for more than three consecutive days, then at VITA's option: (a) VITA may procure such Services from an alternate source; (b) VITA may terminate any portion of this Agreement so affected without charge to VITA or liability to the Supplier and the Charges payable under this Agreement will be equitably adjusted to reflect those terminated Services; or (c) VITA may terminate this Agreement, without charge to VITA or liability to the Supplier, as of a date specified by VITA in a written notice of termination to the Supplier. The Supplier will not have the right to any additional payments from VITA for costs or expenses incurred by the Supplier as a result of any Force Majeure Event.

21.3.4 A Force Majeure Event will not relieve the Supplier of its obligations to implement all of the Services relating to Disaster Recovery and Business Continuity that are included in this Agreement within the required time periods as described in this Agreement.

21.3.5 During a Force Majeure Event or other service disruption that impacts not only VITA (including any Customers) but also other customers of the Supplier, the Supplier will not give any of its other customers higher priority for recovery of services than it gives to VITA and the other Customers.

**22. DISPUTE RESOLUTION.** Any dispute between the Parties arising out of or relating to this Agreement, including with respect to the interpretation of any provision of this Agreement or with respect to performance by the Supplier or VITA, will be resolved as provided in this **Section 22 (Dispute Resolution)**.

**22.1 Dispute Resolution Procedure.**

22.1.1 **Informal Dispute Resolution Efforts.** Whenever a dispute arises, the Parties shall first attempt to resolve such dispute informally, as follows:

- (a) **Initial Effort.** The Parties agree that they shall attempt in good faith to resolve disputes through Supplier and VITA management personnel assigned to the Services. If the Parties are unable to resolve a dispute through such efforts in an amount of time that either Party deems reasonable, such Party may, by notice to the other Party, escalate the dispute for resolution by the senior executives in their respective organizations that do not have day-to-day responsibilities associated with the Services.
- (b) **Escalation.** Within five (5) business days after receipt of an escalation notice under **Section 22.1.1(a) (Initial Effort)**, each Party shall prepare and provide to the other Party's senior executives, summaries of the relevant information and background of the dispute, along with any supporting documentation, for their review. Within ten (10) business days after receiving the escalation notice, the senior executives shall confer by telephone or in person. If no resolution is found, the senior executives shall confer as many additional times as they deem reasonably necessary. The executives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding. The specific format for the discussions shall be left to the discretion of the senior executives, but may include the preparation of agreed-upon statements of fact or written statements of position.
- (c) **Provision of Information.** During the course of the efforts and negotiations pursuant to this **Section 22.1.1 (Dispute Resolution, Informal Dispute Resolution Efforts)**, all reasonable requests made by one Party to another for non-privileged information, reasonably related to the dispute, shall be honored in order that each of the Parties may be fully advised of the other's position. All negotiation shall be strictly confidential and

used solely for the purposes of settlement. Any materials prepared by one Party for these proceedings shall not be used as evidence by the other Party in any subsequent dispute resolution efforts, including litigation; provided, however, the underlying facts supporting such materials may be subject to discovery.

- 22.1.2 **Contractual Claims.** Without limiting the efforts described in **Section 22.1.1 (Dispute Resolution, Informal Dispute Resolution Efforts)** if unsuccessful, in accordance with §2.2-4363 of the Code of Virginia, contractual claims, whether for money or other relief, shall be submitted in writing to VITA no later than sixty (60) days after final payment; however, written notice of the Supplier's intention to file such claim must be given to VITA at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. VITA shall render a final decision in writing within thirty (30) days after its receipt of the Supplier's written claim.

The Supplier may not invoke any available administrative procedure under §2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of VITA's decision on the claim, unless VITA fails to render its decision within thirty (30) days. The decision of VITA shall be final and conclusive unless the Supplier appeals within six (6) months of the date of the final decision on the claim, by invoking appropriate legal action under §2.2-4364, Code of Virginia or administrative procedures authorized by §2.2-4365, Code of Virginia, if any.

Supplier's remedies shall be limited to claims for damages and Prompt Payment Act interest, all such claims to be processed pursuant to this Section. In no event shall Supplier's remedies include the right to terminate any Services or this Agreement, except as expressly provided under this Agreement.

**22.2 Injunctive Relief.** Without limiting its other rights, Supplier acknowledges and agrees that any breach or threatened breach of (a) its obligation to provide any Services (including Transition-Out Assistance), or (b) its obligations respecting continued performance in accordance with **Section 22.3 (Continued Performance)**, VITA and other Customers may be irreparably harmed, in which case an adequate remedy at law may not be available. In such a circumstance, VITA (or Customer as a third party beneficiary) may proceed directly to a court of competent jurisdiction and if such court finds that Supplier has breached (or attempted or threatened to breach) any such obligation under this Agreement, Supplier agrees that, without any additional findings of irreparable injury or other conditions to equitable relief, it shall not oppose the entry of an appropriate order compelling performance by Supplier and restraining it from any further breaches (or attempted or threatened breaches).

**22.3 Continued Performance.** Each Party agrees (a) to continue performing its obligations under this Agreement while a dispute is being resolved except (and then only) to the extent performance is prevented by the other Party or the issue in dispute precludes performance, and (b) not to take any action that intentionally obstructs, delays, or reduces in any way the performance of such obligations. A good faith dispute regarding invoiced Charges and VITA's withholding payment of disputed charges as permitted under this Agreement will not be considered to prevent the Supplier from performing the Services or preclude performance by the Supplier, nor will this **Section 22.3 (Continued Performance)** be interpreted to limit either Party's right to terminate this Agreement as provided in **Section 11 (Termination)**. The Supplier acknowledges and agrees that any interruption to the Service may cause irreparable harm to VITA or the other Customers and may adversely impact the ability of the Commonwealth to carry out vital public safety and other governmental functions (including homeland security matters).

**22.4 Alternative Dispute Resolution.** Either party may request alternative dispute resolution ("ADR") pursuant to VITA's ADR procedures. ADR may be invoked at any time and concurrently with any other process prescribed

by this Agreement or the Code of Virginia. The ADR procedures do not toll any statutory deadline or any deadline specified in this Agreement.

## **23. GENERAL**

**23.1 Entire Agreement.** This Agreement – including these General Terms and Conditions and the attached Exhibits other attachments – constitutes the entire agreement between the Parties with respect to its subject matter and merges, integrates and supersedes all prior and contemporaneous agreements and understandings between the Parties, whether written or oral, concerning its subject matter.

**23.2 Contracting Parties; No Third Party Beneficiaries.** This Agreement is entered into solely between, and may be enforced only by, VITA and the Supplier. This Agreement does not create any legally enforceable rights in third parties, including service providers, subcontractors and customers of a Party, except as provided in **Section 18 (Insurance)**.

**23.3 Contract Amendments and Modifications.** Any terms and conditions varying from this Agreement on any order or written notification from either Party will not be effective or binding on the other Party. This Agreement may be amended or modified solely in a writing signed by an authorized representative of each VITA and Supplier. No amendment or modification hereof shall be valid unless in writing and signed by an authorized representative of the Party against which such amendment or modification is sought to be enforced. The express terms of the Agreement control and supersede any course of performance or dealing or usage of the trade inconsistent with any of the terms thereof.

**23.4 Governing Law.** This Agreement shall be governed by and construed in accordance with the Laws of the Commonwealth of Virginia without regard to that body of law controlling choice of law. Any and all litigation shall be brought in the courts of the Commonwealth of Virginia. The English language version of the Agreement prevails when interpreting the Agreement. The United Nations Convention on Agreements for the International Sale of Goods and all other Laws and international treaties or conventions relating to the sale of goods are expressly disclaimed. Nothing in this Agreement will be construed to waive the Commonwealth's sovereign immunity which applies to the Customers.

**23.5 Waiver.** No failure or delay by a Party in exercising any right, power or remedy will operate as a waiver of that right, power or remedy, and no waiver will be effective unless it is in writing and signed by an authorized representative of the waiving Party. If a Party waives any right, power or remedy, the waiver will not waive any successive or other right, power or remedy that Party may have.

**23.6 Remedies Cumulative.** Except as otherwise expressly provided in this Agreement, all remedies provided in this Agreement are cumulative and in addition to and not in lieu of any other remedies available to a Party under this Agreement, at law, or in equity.

## **23.7 References**

23.7.1 The section headings and the table of contents used in this Agreement are for convenience of reference only and will not enter into the interpretation of this Agreement.

23.7.2 Unless otherwise indicated, section references are to sections of the document in which the reference is contained. For example, section references in these General Terms and Conditions are to sections of these General Terms and Conditions and, likewise, section references in an attachment to these General Terms and Conditions are to sections of that attachment.

23.7.3 Unless otherwise indicated, references in an Exhibit to a Section or paragraph of "the Agreement" are references to the Section in these General Terms and Conditions.

- 23.7.4 References to numbered (or lettered) sections of this Agreement also refer to and include all subsections of the referenced section.
- 23.7.5 Unless otherwise indicated, references to an Exhibit or other attachment to these General Terms and Conditions also refer to and include all documents that are subsidiary to, attached to or incorporated in (either directly or through other attachments) the referenced Exhibit. For example, a reference to **Exhibit 3 (Reporting and Service Level Management)** (including such a reference in **Exhibit 3 (Reporting and Service Level Management)**) includes all subsidiary Exhibits to **Exhibit 3 (Reporting and Service Level Management)**.
- 23.7.6 Unless the context requires otherwise, (a) ***“including”*** (and any of its derivative forms) means including but not limited to, (b) ***“may”*** means has the right, but not the obligation to do something and ***“may not”*** means does not have the right to do something, (c) ***“will,” “must”*** and ***“shall”*** are expressions of command, not merely expressions of future intent or expectation, (d) ***“or”*** shall not be exclusive, (e) words used in the singular include the plural, the plural includes the singular, and the neuter gender includes the masculine and the feminine, (f) the words ***“herein,” “hereof,”*** and ***“hereunder”*** and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection or other subdivision, and (g) references by name to specific divisions, departments, programs, or the like are intended for the convenience and not to limit either party’s rights or obligations with respect thereto.

**23.8 Order of Precedence.** If there is any conflict within this Agreement, the Parties will attempt to read any such conflicting provisions consistently, however, in the event such a consistent reading cannot be accomplished, the order of precedence will be as follows: (a) the General Terms and Conditions and any amendments thereto, (b) the Exhibits, (c) the Attachments, (d) other attachments to this Agreement, (e) Statements of Work (including Change Orders thereto), and (f) documents incorporated by reference.

**23.9 Severability.** If any provision of this Agreement conflicts with the Law under which this Agreement is to be construed or if any provision of this Agreement is held invalid, illegal, or otherwise unenforceable by a competent authority, such provision will, if possible, be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable Law. In any event, the remainder of this Agreement will remain in full force and effect.

**23.10 Counterparts.** This Agreement may be executed in several counterparts and by facsimile or PDF signature, all of which taken together constitute a single agreement between the Parties. Each signed counter-part, including a signed counterpart reproduced by reliable means (including facsimile and PDF), will be considered as legally effective as an original signature.

**23.11 Reading Down.** If a provision of this Agreement is reasonably capable of an interpretation which would make that provision valid, lawful and enforceable and an alternative interpretation that would make it unenforceable, illegal, invalid or void then, so far as is possible, that provision will be interpreted or construed to be limited and read down to the extent necessary to make it valid and enforceable.

**23.12 UCITA.** UCITA shall apply to the Agreement only to the extent required by §59.1-501.15 of the Code of Virginia.

**23.13 Survival.** Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect. Additionally, all provisions of this Agreement shall survive the expiration or termination of this Agreement to the fullest extent necessary to give the Parties the full benefit of the bargain expressed herein.



**23.14 Binding Nature and Assignment.** This Agreement shall be binding on the Parties and shall inure to the benefit of the permitted successors and assigns of VITA and Supplier. Supplier shall not assign, subcontract, delegate or otherwise convey this Agreement or any of its rights and obligations hereunder, to any entity without the prior written consent of VITA, and any such attempted assignment or subcontracting without such written consent shall be void. VITA may assign this Agreement to any entity, so long as the assignee agrees in writing to be bound by all the applicable terms and conditions of Agreement.

If any Law limits the right of VITA or Supplier to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be thirty (30) days after the Supplier gives VITA prompt written notice of the assignment, signed by authorized representatives of both the Supplier and the assignee, and any payments made prior to receipt of such notification shall not be covered by such assignment.

### **23.15 Notices**

23.15.1 All notices, requests, demands and determinations under this Agreement (other than routine operational communications), will be in writing and will be deemed duly given (a) when delivered by hand, (b) on the day of delivery after being given to an express overnight courier with a reliable system for tracking delivery, (c) on the day of delivery, when mailed by United States mail, registered or certified mail, return receipt requested and postage prepaid, or (d) on the date delivered to the recipient's email server when sent by electronic mail (email), and addressed, with electronic copies, as follows:

- (a) In the case of physical delivery to VITA:

Virginia Information Technologies Agency  
11751 Meadowville Lane  
Chester, VA 23836  
Attention: Jessica D. Sudduth, Commercial Contract Management

In the case of electronic delivery to VITA:

Jessica D. Sudduth - Jessica.Sudduth@vita.virginia.gov

With electronic copies to:

VITA Commercial Contract Management - CommercialContracts@vita.virginia.gov

VITA Legal Notices - LegalNotices@vita.virginia.gov

- (b) In the case of physical delivery to the Supplier:

Gerald Britt  
Xerox Corporation  
10406 Lakeridge Parkway  
Ashland, VA 23005

Physical copies to:

Joe Chambers  
Xerox Corporation  
10406 Lakeridge Parkway

Ashland, VA 23005

Office of General Counsel  
Attention: Louie Parker  
201 Merritt 7  
Norwalk, CT 06851

(c) In the case of electronic delivery to the Supplier:

Gerald Britt - Gerald.Britt@Xerox.com  
Joe Chambers – Joe.Chambers@Xerox.com

23.15.2 A Party may from time to time change its address or designee for notification purposes by giving the other prior written notice of the new address or designee and the date upon which it will become effective.

**23.16 Non-Solicitation.** Except as expressly set forth herein, during the term of this Agreement and for a period of twelve (12) months thereafter, Supplier shall not solicit for employment directly or indirectly, nor employ, any employees of VITA or other Customer without the prior approval of VITA or such other Customer. Except as expressly set forth herein, during the term of this Agreement and for a period of twelve (12) months thereafter, VITA shall not solicit for employment directly or indirectly, nor employ, any employee of Supplier involved in the performance of the Services without the prior consent of Supplier. In each case, the prohibition on solicitation and hiring shall extend ninety (90) days after the termination of the employee's employment or, in the case of Supplier employees, the cessation of his or her involvement in the performance of Services. This provision shall not operate or be construed to prevent or limit any employee's right to practice his or her profession or to utilize his or her skills for another employer or to restrict any employee's freedom of movement or association. Neither the publication of classified advertisements in newspapers, periodicals, Internet bulletin boards, or other publications of general availability or circulation nor the consideration and hiring of persons responding to such advertisements shall be deemed a breach of this **Section 23.16 (Non-Solicitation)**, unless the advertisement and solicitation is undertaken as a means to circumvent or conceal a violation of this provision and/or the hiring party acts with knowledge of this hiring prohibition.

### **23.17 Independent Contractor**

23.17.1 The Parties intend to create and are creating under this Agreement an independent contractor relationship and nothing in this Agreement will operate or be construed as making the Commonwealth or VITA (or any other Customers) partners, joint venturers, principals, joint employers, agents or employees of or with the Supplier, and vice versa. No officer, director, employee, agent, Affiliate, contractor or subcontractor retained by the Supplier to perform work hereunder will be deemed to be an officer, director, employee, agent, affiliate, contractor or subcontractor of the Commonwealth, VITA or any other Customer for any purpose. Under no circumstance is the Supplier or any Supplier Personnel to be considered a Commonwealth officer or employee or other covered or insured party. Accordingly, the Supplier will be solely responsible for providing and/or ensuring appropriate compensation and benefits, including health benefits, for such Supplier Personnel in accordance with all applicable Laws; and payment of all employment-related taxes. The Supplier, not the Commonwealth, VITA or any of the other Customers, has the right, power, authority and duty to supervise and direct the activities of the Supplier Personnel and to compensate such Supplier Personnel for any work performed by them hereunder and each Supplier Personnel is the employee or agent of Supplier and in no manner a common law employee or otherwise agent of VITA or any Customer.

23.17.2 In addition, the Supplier expressly acknowledges and agrees that the Services rendered pursuant to this Agreement will not form the basis for any rights of eligibility, vesting or participation in any fringe benefits afforded to any employees of VITA, including, but not limited to, vacation and holiday pay, leaves of absence, health and welfare benefits, including coverage for medical, dental, vision, accidental death and disability, long-term disability, life insurance, severance benefits, retirement benefits, including pension or thrift plan contributions, and/or any other benefits of any kind or nature provided by VITA to its employees, whether or not maintained under a qualified ERISA plan, even if a person's period of performance hereunder is subsequently reclassified by a third party as a period of employment with VITA for any other purpose. The Supplier, and not the Commonwealth, VITA or the other Customers, will be responsible and therefore solely liable for all acts and omissions of Supplier Personnel, including acts and omissions constituting negligence, gross negligence, willful misconduct or fraud.

23.17.3 The Supplier agrees to accept exclusive liability for the payment of taxes whether federal, state or local, or contributions for income taxes, unemployment insurance, retirement pensions, annuities or social security payments which are measured by the wages, salaries or other remuneration paid to Supplier Personnel and to defend and indemnify VITA Indemnitees for any such taxes, contributions or penalties which VITA may be compelled to pay. The Supplier also agrees to comply with all valid administrative regulations respecting the assumption of liability for such taxes and contributions.

**23.18 Covenant of Good Faith.** Each Party, in its respective dealings with the other Party under or in connection with this Agreement, will act reasonably and in good faith.

**23.19 Covenant Against Pledging.** The Supplier agrees that, without the prior written consent of VITA, it will not assign, transfer, pledge, hypothecate or otherwise encumber its rights to receive payments from VITA under this Agreement for any reason whatsoever. To the extent VITA permits the Supplier to assign, transfer, pledge, hypothecate or otherwise encumber its rights to receive payments from VITA under this Agreement, the Supplier will continue to be VITA's sole point of contact with respect to this Agreement, including with respect to payment. The person or Entity to which such rights are assigned, transferred, pledged, hypothecated or otherwise encumbered will not be considered a third party beneficiary under this Agreement and will not have any rights or causes of action against VITA.

**23.20 No Liens.** The Supplier will not file, or by its action or inaction permit, any liens to be filed on or against property or realty of VITA or any other Customer. In the event that any such liens arise as a result of the Supplier's action or inaction, the Supplier will obtain a bond to fully satisfy such liens or otherwise remove such liens at its sole cost and expense within ten (10) Business Days. If the Supplier fails to do so, VITA may, in its sole discretion, pay the amount of such lien out of VITA's funds, or deduct such amounts from payments due to the Supplier as necessary to pay such lien. If VITA pays the lien amount out of VITA's funds, such amount paid by VITA shall become an obligation of Supplier which may be withheld from amounts due Supplier under this Agreement.

**23.21 Approvals and Similar Actions.** If consent or approval is required from a Party, it may be withheld in such consenting or approving Party's sole discretion, unless expressly stated otherwise. An approval or consent given by a Party under this Agreement will not relieve the other Party from responsibility for complying with the requirements of this Agreement, nor will it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such approval or consent.

**23.22 Further Assurances.** The Parties will execute and deliver such other instruments and documents, and take such other actions, as either Party reasonably requests to evidence or effect the transactions contemplated by this Agreement.

**23.23 Non-Delegation.** Nothing herein will be deemed or construed as delegating the discretionary powers or authority of VITA or any of the Customers to the Supplier. Further, nothing herein will be deemed or construed as delegating the discretionary powers or authority of the other Customers to VITA or the discretionary powers or authority of VITA to the other Customers.

**23.24 Public Disclosures; Service Marks.** The Supplier will not make any press releases, public announcements or similar public disclosure relating to this Agreement or its subject matter, including promotional or marketing material without the prior consent of VITA and the impacted Customers, and any such press release, public announcement or similar public disclosure will be coordinated with and approved by VITA and the impacted Customers prior to release. Nothing in this Section will be construed as permitting the Supplier to use any trademark, service mark, trade name, logo, symbol, seal or brand name of VITA, the Commonwealth, or any other Customer without prior written consent of VITA or the applicable Customer, which VITA or such Customer may give or deny in its sole discretion. This provision does not alter the restrictions on the disclosure of Confidential Information set forth herein. The Supplier will not, without VITA's consent, use the name, service marks or trademarks of VITA in any advertising or promotional materials prepared by or on behalf of the Supplier.

**23.25 Export Controls.** Each of VITA and the Supplier will retain responsibility for its compliance with all applicable export control Laws and economic sanctions programs relating to its respective business, facilities, and the provision of services or products to third parties. Neither VITA nor the Supplier, as applicable, will be required by the terms of this Agreement to be directly or indirectly involved in the provision of goods, software, services and/or technical data that may be prohibited by applicable export control or economic sanctions programs if performed by such Party. Applicable export control or economic sanctions programs may include U.S. export control Laws such as the Export Administration Regulations and the International Traffic in Arms Regulations, and U.S. economic sanctions programs that are or may be maintained by the U.S. Government, including sanctions currently imposed against Cuba, Iran, North Korea, Sudan and Syria, as well as Specially Designated Nationals and Blocked Persons programs. VITA and the Supplier will comply with U.S. export control and U.S. economic sanctions Laws with respect to the export or re-export of U.S. origin goods, software, services and/or technical data, or the direct product thereof. Prior to VITA and the Supplier providing each other any goods, software, services and/or technical data subject to export controls controlled at a level other than EAR99/AT, the providing Party will provide written notice to the receiving Party specifying the nature of the controls and any relevant export control classification numbers. Neither VITA nor the Supplier, as applicable, will be obligated to provide any goods, software, services and/or technical data under this Agreement to any other person, if doing such would violate applicable Law.

**23.26 Mutually Negotiated.** No rule of construction will apply in the interpretation of this Agreement to the disadvantage of one Party on the basis that such Party put forward or drafted this Agreement or any provision of this Agreement.

## **23.27 Contract Documents.**

23.27.1 Exhibits. The following table lists the documents comprising the full Agreement, each of which is incorporated herein by this reference:

Number	Name
MSA	Master Services Agreement
Exhibit 1	Integrated Services Platform
Exhibit 1.1	Definitions
Exhibit 1.2	Governance Framework
Exhibit 1.3	SMM Outline
Exhibit 1.4	OLA Outline



Number	Name
Exhibit 2	Description of Services and Solution
Exhibit 2.1	Description of Services – Managed Print Services
Exhibit 2.2	Description of Services – Cross Functional
Exhibit 2.3.1	Solution – Managed Print Services
Exhibit 2.3.2	Solution – Cross-Functional Services
Exhibit 2.4	Implementation Plan
Exhibit 2.5	Transition Out Plan
Exhibit 2.6	Reserved
Exhibit 2.7	Sites
Exhibit 3	Reporting and Service Level Management
Exhibit 3.1	Service Level Matrix
Exhibit 3.2	Service Level Definitions and Measurement
Exhibit 3.3	Critical Deliverables
Exhibit 3.4	Reports Matrix
Exhibit 3.5	Customer Satisfaction
Exhibit 4	Pricing and Financial Provisions
Exhibit 4.1	Pricing and Volumes Matrix
Exhibit 4.2	Resource Unit Definitions
Exhibit 4.3	Reserved
Exhibit 4.4	Form of Invoice
Exhibit 4.5	Reserved
Exhibit 4.6	Reserved
Exhibit 4.7	Reserved
Exhibit 4.8	Third Party Contracts
Exhibit 4.9	Billing Triggers
Exhibit 5	Personnel and Human Resource Provisions
Exhibit 5.1	Key Personnel
Exhibit 5.2	Personnel Projection Matrix

The descriptions included in the foregoing table shall not be read as adding or limiting obligations otherwise described in this Agreement or the documents themselves.

23.27.2 Attachments. The following Attachments are attached to these General Terms and Conditions and incorporated herein by this reference:

Attachment A - Form of Statement of Work

Attachment B - Form of Change Order

Attachment C - Reserved

Attachment D - License Agreement Addendum (LAA)

Attachment E - Supplier Procurement and Subcontracting Plan

Attachment F - Certification Regarding Lobbying

Attachment G – VITA Core Contractual Terms

Attachment H – VITA Mandatory Internal Revenue Service Publication 1075 terms

**[End of General Terms and Conditions - Signature Page Follows]**





**IN WITNESS WHEREOF**, the Parties have duly executed and delivered this Agreement, effective as of the Effective Date.

**COMMONWEALTH OF VIRGINIA  
VIRGINIA INFORMATION TECHNOLOGIES AGENCY**

By: \_\_\_\_\_  
Name:  
Title:  
Date:

**SUPPLIER**

By: \_\_\_\_\_  
Name:  
Title:  
Date: