

MODIFICATION NO. 005-B  
TO  
CONTRACT NO. VA-151028-MCI

VIRGINIA INFORMATION TECHNOLOGIES AGENCY  
AND  
VERIZON BUSINESS NETWORK SERVICES LLC

This Modification No. 005-B, effective as of the date of execution by VITA (“Modification Effective Date”), is between VIRGINIA INFORMATION TECHNOLOGIES AGENCY (“VITA”), on behalf of the Commonwealth of Virginia, and VERIZON BUSINESS NETWORK SERVICES LLC, on behalf of MCI Communications Services, LLC (individually and collectively, “Verizon”) (the “Supplier” or “Contractor”) (the “Supplier”).

WHEREAS, as of July 1, 2020, Verizon Business Network Services Inc. converted to a limited liability company, Verizon Business Network Services LLC (See Attachment 1, Verizon Business Network LLC’s Virginia State Corporation Commission filing, Delaware Certificate of Conversion, and Delaware Certificate of Formation);

WHEREAS, as of July 1, 2020, MCI Communications Services, Inc. converted to a limited liability company, MCI Communications Services, LLC (See Attachment 2, MCI Communications Services, LLC’s Virginia State Corporation Commission filing, Delaware Certificate of Conversion, Delaware Certificate of Formation);

WHEREAS, in Modification 5 of Contract Number VA-151028-MCI (**the “Agreement”**), Attachment 1, the parties incorporated the following Exhibits:

- Master Service Agreement (MSA)
- Exhibit 1.1 Definitions
- Exhibit 5.1 Key Personnel

WHEREAS, the parties desire to amend the Agreement by modifying Supplier’s entity name, updating the Notices section of the Master Service Agreement (MSA), amending the definition of Commencement Date in Exhibit 1.1 and updating the Key Personnel Table in Exhibit 5.1;

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 agree to modify Attachment 1 to Modification No. 5 to Contract Number VA-151028-MCI as follows:

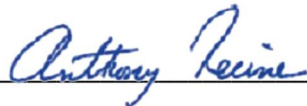
1. Effective July 1, 2020, to correctly identify the parties to the Agreement following the Verizon entity conversions, all references to Verizon Business Network Services, Inc. are hereby replaced with Verizon Business Network Services LLC and all references to MCI Communications Services Inc. are hereby replaced with MCI Communications Services, LLC.

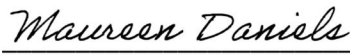
2. Master Service Agreement (MSA). Master Service Agreement is deleted in its entirety and replaced with the attached Revised Master Service Agreement (MSA) reflecting a change to 23.15 Notices.
  
3. Exhibit 1.1 – Definitions. Exhibit 1.1 is deleted in its entirety and replaced with the attached Revised Exhibit 1.1 (Definitions) reflecting a change to the Commencement Date definition.
  
4. Exhibit 5.1 – Key Personnel. Exhibit 5.1 is deleted in its entirety and replaced with the attached Revised Exhibit 5.1 (Key Personnel) reflecting a change to the Key Personnel Table (as of January 14, 2020).

The foregoing is the complete and final expression of the agreement between Supplier and VITA to modify the Agreement and cannot be modified, except by a writing signed by a duly authorized representative of each of Supplier and VITA.

VERIZON BUSINESS NETWORK  
 SERVICES LLC ON BEHALF OF  
 MCI COMMUNICATIONS SERVICES LLC  
 D/B/A VERIZON BUSINESS SERVICES

VIRGINIA INFORMATION  
 TECHNOLOGIES AGENCY

By:   
 Name: ANTHONY RECINE  
 Title: SENIOR VICE PRESIDENT  
 Date: 11/12/2020

By:   
 Name: Maureen Daniels  
 Title: Senior Commercial Contract Manager  
 Date: 11/18/20



## Modification #5 To Contract Number VA-151028-MCI

This amendment (“Modification”) to Contract No. VA-151028-MCI between the Virginia Information Technologies Agency (“VITA”) on behalf of the Commonwealth of Virginia (sometimes hereinafter the “Commonwealth”), and Verizon Business Network Services Inc., on behalf of MCI Communications Services, Inc. d/b/a Verizon Business Services (individually and collectively, “Verizon”) (the “Supplier” or “Contractor”) (each, a “Party” and collectively, the “Parties”) is made effective as of August 15, 2018.

Whereas, Supplier provides telecommunications, network, and data services to the Commonwealth under Contract No. VA-151028-MCI (the “Contract”);

Whereas, VITA provides Commonwealth-wide IT infrastructure and related services that include the provision of telecommunications, network, and data services;

Whereas, VITA wishes to order a comprehensive set of telecommunications, network, and data services for VITA’s customers through a statement of work entered into under the Contract, and such services would be delivered through a managed information technology integrated services platform;

Whereas, the delivery of services through a managed information technology integrated services platform requires the modification of certain terms of the Contract and the inclusion of additional terms to, among other things, ensure interoperability with other providers in the managed integrated services platform; and

Whereas, section 11(U) of the Contract permits amendment by a written instrument signed by both Parties;

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. Scope and Applicability of Modification.**

A. The modifications made to the Contract by this Modification shall apply only to the goods and services ordered, delivered, or performed pursuant to VITA’s statement of work attached hereto as Attachment 1 (“VITA’s SOW”).

B. The Contract is hereby amended to add and incorporate the provisions of VITA’s SOW, along with all exhibits and attachments thereto.

C. The scope of customers and users to whom services are available under VITA’s SOW is set forth in Section 1.7 (Customers) of VITA’s SOW.

D. In case of a conflict between any provision of the Contract, including attachments, exhibits, addenda, and modifications as of the Effective Date, and the provisions of VITA’s SOW, the provisions of VITA’s SOW, including all exhibits and attachments thereto, shall control and govern the Parties in all matters relating to the goods and services ordered, delivered, or performed under VITA’s SOW.

**2. Definitions.**

Capitalized terms used in this Modification have the meaning provided where each term is used in this Modification or, if not defined in this Modification, then the meaning provided in Exhibit 1.1 (Definitions) to VITA’s SOW.

**3. Specific Modifications.**

The specific modifications to the Contract are set forth in the following table.

<u>Contract Reference</u>	<u>Modification Description</u>
Section 2 Definitions	Paragraphs A through F, J through L, and O of Section 2 shall not apply to VITA’s SOW.
Section 3 Term and Termination	Pursuant to paragraph A of Section 3, VITA’s SOW shall survive the expiration of the term of the Contract, as shown in Section 6 of VITA’s SOW.
Section 4 Services	The Service Requirements, Service Fees, and Service descriptions for VITA’s SOW are described in the SOW and the Parties shall look to the SOW for the Service Levels and related obligations.
Section 5 Acceptance and Cure	Section 5 is modified for purposes of VITA’s SOW to replace “Authorized User” with “Customer.” This section shall be supplemented by VITA’s SOW, in particular, Section 10 of the SOW.
Section 6 New Technology	For purposes of VITA’s SOW, Section 6 is applicable when the New Technology and/or New Service Offerings are considered Additional Services under VITA’s SOW.
Section 7 Supplier Personnel	This section shall be supplemented by VITA’s SOW, in particular, Section 5 of the SOW.
Section 8 General Warranty	This section shall be supplemented by VITA’s SOW, in particular, Section 15 of the SOW.
Section 9 Training and Documentation	This section shall be supplemented by VITA’s SOW.
Sections 10 Rates, Orders and Compensation	This section shall not be applicable to VITA’s SOW. See Section 4 of VITA’s SOW.
Section 11 Invoice Procedures	This section shall not be applicable to VITA’s SOW. See Section 4 of VITA’s SOW.
Section 14 Annual Competitive Review Process	This section shall not be applicable to VITA’s SOW

Section 15 Confidentiality	This section shall not be applicable to VITA's SOW. See Section 17 of VITA's SOW.
Section 16 Indemnification and Liability	To be negotiated
Section 17 Security Compliance	This section shall not be applicable to VITA's SOW. See Section 16 of VITA's SOW.
Section 19 Inventions and Copyrights	This section shall not be applicable to VITA's SOW. See Section 11 of VITA's SOW.
Section 21 General Provisions	This section shall not be applicable to VITA's SOW. See Section 23 of VITA's SOW.

Virginia Information Technologies Agency



**Attachment 1 to Modification #5  
To  
Contract Number VA-151028-MCI**

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

Verizon Business Network Services Inc., on behalf of MCI  
Communications Services, Inc. d/b/a Verizon Business  
Services

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**Statement of Work**

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## STATEMENT OF WORK

The order memorialized in this **Statement of Work** (this "**Agreement**"), effective as of August 15, 2018 (the "**Effective Date**"), is pursuant to Contract No. VA-151028-MCI as amended by Modification #5, and is between VITA and Supplier (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.

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 this Agreement, but that are not included in the Service Catalog or otherwise reasonably necessary to satisfy any requirement contained in **Exhibit 2.1** of this 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 this 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 in writing 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 achieve and maintain 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 and other Integrated Suppliers shall enter into mutually agreeable 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, the Customers or the Supplier 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 agreed to by the Parties, Supplier shall prepare and 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 fifteen (15) Business Days to review each draft Policy and Procedures Manual and provide Supplier with comments and revisions. VITA may take longer than fifteen (15) Business Days to review each draft provided the aforementioned delivery requirements applicable to Supplier are reasonably adjusted. 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 twenty (20) 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 made available by VITA 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 published 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 negotiate and execute mutually acceptable 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. For the avoidance of doubt, replacement of old Customer Premises Equipment with new Customer Premises Equipment is included in the CPE Use charges set forth in Exhibit 4.

## **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; VITA will be entitled to fully enforce such rights and exercise such remedies on behalf of itself and the Customers; and the actions or inaction of the Customers shall be attributable to VITA when determining the Losses sustained by VITA and Supplier's liability therefor.

## **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.

**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, 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 recurring 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 pursuant to Section 1.3 herein 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 promptly 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 by both Parties. 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 upon execution of the modification document as set forth in this Section 1.11.2.
  - (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 this Agreement.
  - (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) to the maximum extent reasonably possible, 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) Supplier will be required to obtain approval through the Change Control Procedure if Supplier will make 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 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 known 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. 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 (1) deficiencies, existing as of the Commencement Date, in the service architecture, engineering, systems and tools applicable to the Services which materially impact Supplier's ability to perform or to transition to the Steady State ("Pre-Existing Issue"), or (2) the failure of VITA (or other Customer) to timely perform their material obligations under this Agreement; but in either circumstance 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 uses commercially reasonable efforts to perform notwithstanding such failure to perform, and (d) except for Pre-Existing Issues, 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 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 of Supplier's Facilities without VITA's prior written consent, which shall not be unreasonably withheld. 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, safety risks;; or for another concern of similar significance; and (ii) such concern(s) cannot be mitigated within a reasonable time in any other commercially reasonable manner; and (iii) 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.
- (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, as a Public Body, is exempt from the assessment of Commonwealth taxes on any property or services acquired under Commonwealth jurisdiction, including sales and use. In addition, VITA is exempt from federal taxes pursuant to 26 United States Code, Sections 4253(i) and (j). Other Customers may be exempt from some or all Federal, State and Local taxes. Such taxes shall not be included in the Charges for VITA. Deliveries against this Agreement shall be free of Federal excise and transportation taxes. Commonwealth's excise tax exemption registration number is 54-73-0076K. The Commonwealth is also exempt from paying E-911 charges. 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 Regulatory Fees and Other Surcharges. VITA shall pay Federal Universal Service Fund ("FUSF"), all other mandatory surcharges, and taxes for which VITA does not present Supplier with valid tax exemption documentation as applicable to the Services. No other regulatory surcharges shall be assessed under this Agreement. The aforementioned charges shall accurately reflect the amounts that the Supplier is required to pay to government agencies or others, and only for the services on which such obligations are actually applicable.

Notwithstanding the forgoing, Customer and/or Authorized Users of this Agreement who are charged such Taxes, fees, surcharges, and Governmental Charges shall not be responsible for the following six surcharges, which Supplier will either suppress or credit, depending upon its system capabilities:

- Carrier Cost Recovery Charge (CCRC)
- Carrier Annual Regulatory Charge (CARC)
- Property Tax Recovery Charge (PTRC)
- Administrative Expense Fee
- Carrier Access Charge (CAC)
- Gross Receipts Tax Surcharge

No regulatory charges will be applied retroactively, whether as a result of a change in Supplier's policy or some other event.

4.3.3 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, 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.

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. For the avoidance of doubt, at no time will the Supplier be required to provide VITA or any third party with documentation or information regarding the Supplier's confidential internal cost components used to determine the prices set forth in 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 one hundred eighty (180) 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 VITA notify Supplier twice of an overbilling and such overbilling occurs a third time, VITA may assess a one percent (1%) charge for the amount over-billed for the third and all subsequent over-billing occurrences.

## **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 for those individuals with logical or physical access to the Managed Environment, or to VITA or Customer Systems, that store, process or transmit Confidential Information and, as requested, VITA and Customer sites), 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 in writing 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 Key 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, (but excluding 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 written 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 not withhold any such approval except in its reasonable discretion.
- 5.7.4 For each Key Personnel position, the Supplier shall 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 the Parties may have;
  - (b) expeditiously identify and seek VITA's approval of a suitable replacement, which VITA will expeditiously provide or reject; 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 for at least thirty (30) days 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 two (2) 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, 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 VITA acknowledges that Supplier will assign Supplier Personnel to the extent necessary and sufficient to deliver the Services in accordance with this Agreement. As such, Supplier's projection of Supplier Personnel set forth in Exhibit 5.2 (Personnel Projection Matrix) is both indicative and approximate, and actual Supplier Personnel deployed may vary in roles and quantity. Indeed, VITA expects and endorses that the mix and quantities of identified Supplier Personnel will change materially over the term. Supplier agrees to meet with VITA and promptly address any reasonable concerns of VITA or other Customers regarding Supplier's performance under this Agreement as they might relate to the mix and quantities of Supplier Personnel supporting the Services.
- 5.9.2 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.

## 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 June 14, 2024 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). The Parties shall make every commercially reasonable effort to begin discussions regarding Renewal 180 days prior to the expiration of the Term. VITA may exercise a Renewal option by providing written notice to the Supplier no later than) 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 11.3 (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 VITA's and Customer's 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. If VITA gives ninety (90) days' notice of its expected failure to obtain a Required Consent by the required date, the alternative approaches shall be at no cost to VITA.
- 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. No later than thirty (30) days following the Commencement Date, Supplier will prepare a Refresh plan for VITA's approval, which will identify the Equipment and Software to be refreshed during the following 12 months in accordance with Supplier's Refresh obligations. Supplier will report on progress against the Refresh plan on a quarterly basis and update the plan annually.
- 8.1.4 Supplier shall Refresh the Equipment and Software throughout the Term in accordance with the approved Refresh plan, which shall incorporate the following considerations:
  - a) Prioritize the Refresh of Equipment and Software which is found to be non-compliant with VITA Rules
  - b) Refresh Equipment and/or Software to remediate Pre-Existing Issues promptly and in any case no later than thirteen (13) months after the Commencement Date
  - c) Where feasible, coordinate the Refresh of Equipment with Supplier's migration of Services to Supplier's standardized platforms, and in a manner that allows Supplier to minimize the number of Site visits
  - d) Refresh Equipment no later than manufacturer's end of support date
  - e) Refresh the Equipment and Software which will maximize the benefit for VITA (the oldest Equipment and Software and those with the highest business impact shall have Refresh priority) while minimizing the business disruption caused by the Refresh
  - g) Refresh and maintain Software in versions as set forth in **Exhibit 2 (Description of Services and Solution)**.

## 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 Source Code, 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. Such license will be effective during the Term and thereafter (including in connection with a partial termination or expiration of this Agreement). 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)**.
- 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 the License Agreement Addendum attached hereto as **Attachment D (License Agreement Addendum)**. Supplier shall ensure that any such third party software owner executes such License Agreement Addendum. 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.

## 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 in a manner that minimizes 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.

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 material 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 business purposes of the Commonwealth.

## 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 on a non-commercial basis and 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 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 any liability. 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. If a purported termination for cause by VITA is found by a competent authority not to have been a proper termination for cause, then VITA may elect to deem such termination 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; (vii) has had any significant portion of its assets attached; or (viii) has experienced a material negative change in its net assets (i.e., total assets minus total liabilities); 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 and permissible 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 to 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, VITA Confidential Information, VITA owned Equipment, and all other Systems to which VITA or the other Customers are or would be entitled 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 Services affected by the expiration, termination, or cessation (the "**Affected Services**"), will not be degraded during the Transition Out Assistance Period. The Supplier will not make any unreasonable changes to the number of Supplier Personnel providing Services during the Transition Out Assistance Period or unreasonably 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 2.6 (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 program management 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) to the extent the following items were created and controlled by Supplier, 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 (if any).

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 ensure it conducts the above-described hiring activity in a manner that minimizes disruption of the performance by Supplier of its obligations under this Agreement in light of the continuing requirement in Section 13.3.1 for Supplier to continue to meet applicable Service Levels.

- 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 except for those set forth in the applicable lease. 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 14.7 (Reporting and Fees from Supplier)**, and Sales Reports/IFA Payments Completion Certificate. Any requested Final Payment Certificate will be completed and returned promptly by Supplier upon final payment by VITA. 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:
- 13.5.2 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
- 13.5.3 following a notice of termination by VITA for cause under **Section 12.1 (Termination by VITA for Cause)**.
- 13.5.4 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. However, in the event the Parties are unable to reach agreement regarding the chargeability of Transition Out Assistance, Supplier shall not delay performance of Transition Out Assistance provided VITA provides written assurance that Supplier will

not be precluded from charging for such services if it is determined they are chargeable solely on the basis that Supplier began performance of 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 (excluding Supplier's confidential cost 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 but in no event including Supplier's confidential cost information, 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, reports, filings, 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. Notwithstanding the foregoing, Supplier shall in no event be required to disclose its confidential cost data to VITA Auditors. VITA Auditors will take reasonable steps to minimize interruptions to Supplier's operational support of its other customers. Supplier shall have no obligation to disclose to VITA Auditors the confidential information belonging to Supplier's other

customers. 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 appropriate for the type and sensitivity of information to be disclosed to the VITA Auditors. To the extent a VITA Auditor is a Commonwealth entity, the confidentiality provisions in this Agreement will apply. Subject to the foregoing limitations, 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 provided such audit software does not perform security penetration testing, except as otherwise required in Exhibit 2 of this Agreement, (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 material breach of this Agreement, 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. 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 those funds. 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 at least one of the following standards, which Supplier may select in its discretion: (1) the ISO/IEC 27001 and 27002 standards (as each may be modified or replaced from time to time), (2) the SOC 2 standards under the Statements on Standards for Attestation Engagements (SSAE) No. 18; or (3) the Moderate controls contained within The Federal Risk and Authorization Management Program (FedRAMP). Supplier will

provide VITA with a copy of such 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 for Attestation Engagements (SSAE) No. 18, Reporting on Controls at a Service Organization. Upon request, Supplier shall provide VITA with a 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 however, the redacted report shall be sufficient to demonstrate the scope of the audit, identify the controls tested, and the results of the tests.). 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, subject to the confidentiality provisions of this Agreement. The Supplier's management will execute any representations, attestations or other documents required by Supplier's auditor who performs the audit 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, 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 14.7 (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 (Industrial Funding Adjustment): 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, to the best of its knowledge, 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; and (b), to the best of Supplier's knowledge, 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, and Supplier, will, in addition to indemnifying VITA Indemnitees as provided in **Section 19 (Infringement Claims)**: (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. For the avoidance of doubt, VITA shall not have the right to prescribe Supplier's choice of (a) or (b) above.

### 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 not knowingly provide the Services in a manner that causes 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 but does not hereby waive any defences that are or may be available to the Supplier.
- 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/StatutorilyMandate](http://www.vita.virginia.gov/uploadedfiles/VITA_Main_Public/scm/StatutorilyMandate)

dTsandCs.pdf or successor URL(s) (a copy of which, current as of the Agreement Effective Date, is attached hereto as Attachment G); and

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 in the case of any Work Product that is software or Services involving the use of Software, the Supplier will not knowingly include in such software (a) any routine intended to cause such 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. 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 Reserved.

**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 has no reason to believe that it is 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 15. (REPRESENTATIONS, WARRANTIES AND COVENANTS)**, 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 request of VITA, the Supplier shall execute a Business Associate Agreement with VITA in the form mutually acceptable to the Parties.

**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: <http://www.vita.virginia.gov/default.aspx?id=6442475453>, 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, to the extent applicable, 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 a form and format reasonably requested by VITA (or such other Customers); however, in no event shall the VITA Data be returned or otherwise provided in a form and format which is not widely readable. 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 reasonable 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 written non-disclosure agreements with provisions no less restrictive than the provisions of this Section 17. 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 Parties will be responsible for all acts and omissions of their Personnel and any third party to whom the Party permits access to Confidential Information in violation of the terms of this Section 17. 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.** As may be required by certain Customer policies for Supplier to perform certain Services and only at specific locations, 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) 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 an 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 VII 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 three (3) year 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 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 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 limits adequate to cover insured property on a full replacement cost basis and a business interruption limit of \$2,000,000;

- 18.2.2 Commercial General Liability with a limit of \$5,000,000 per occurrence for bodily injury and property damage and \$5,000,000 general aggregate including premises-operations, independent contractors, personal and advertising injury, contractual liability and products/completed operations.
- 18.2.3 Commercial Fidelity and Crime Insurance with a limit of \$2,000,000 per loss, including coverage for Computer Fraud;
- 18.2.4 Errors and Omissions Liability Insurance covering Network Security and Cyber Liability with a limit of \$15,000,000 per claim and aggregate, which can be satisfied by primary or excess professional limits, providing coverage for the Supplier's acts, errors and omissions arising out of the Supplier's performance or non-performance of the Services Such insurance will be endorsed to include VITA, the other Customers, and their officers and directors as additional insureds;
- 18.2.5 Excess or Umbrella Liability Insurance coverage with a broad as primary endorsement, with a limit of \$10,000,000 per occurrence and \$10,000,000 as an annual aggregate.

### 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. 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 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 require all Subcontractors, if any, to maintain insurance types described above naming or endorsing the Supplier as an additional insured. The Supplier will require all Subcontractors to maintain coverage amounts that are the greater of (1) one million dollars (\$1,000,000), and (2) three (3) times the amounts the Supplier anticipates paying each Subcontractor when Supplier enters into a subcontract in support of this Agreement.
- 18.4.2 The Supplier agrees to use commercially reasonable efforts to 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 16 (Data Security and Protection)** or **17 (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 where the acts or omissions are alleged to have met the applicable standard for the cause of action;
- 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)**: (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. For the avoidance of doubt, VITA shall not have the right to prescribe Supplier's choice of (a) or (b) above.

### 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**"). If Supplier provides the Notice of Election after the Notice Period, VITA may extend the Notice Period if VITA determines, in VITA's sole and reasonable discretion, that such an extension will not adversely impact the defense of the Claim. 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 VITA Indemnitee notified the Supplier of a Claim pursuant to Section 19.3.1 above and the Supplier failed to defend such 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 that specifically triggers VITA's right to require 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 three (3) Business Days after receiving VITA's written 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 the process for identifying the cause of the failure or incident that the Remediation Plan is intended to remedy or prevent:

20.2.1 where remedy of the failure or incident is possible, the actions that will be taken by the Supplier to effect that remedy;

20.2.2 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; and

20.2.3 the timeline for implementing the Remediation Plan.

**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 (including a request for additional information), 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.**

Supplier will only implement the Remediation Plan upon approval from VITA, which shall not be unreasonably withheld or delayed. The preparation and submission of a Remediation Plan shall not limit Supplier's ability to implement reasonable measures to mitigate the losses and damages sustained by the Supplier, VITA and Customers.

**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 20.1**, 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 reasonable 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 Supplier has taken actions necessary and appropriate to mitigate the risk that the occurrence giving rise to the Step In will 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 solely as a result of or in connection with VITA exercising its right to Step In, provided such costs and expenses are not normally incurred by VITA.

**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) only to the extent that VITA will not be made whole after the Supplier's reimbursement of Step In Costs and waiver of the Supplier's Charges for the affected Services pursuant to Section 20.5.4 above.

## 21. LIABILITY

### 21.1 Liability Cap

21.1.1 Supplier's liability with respect to this Agreement shall be limited to Three Hundred Million Dollars (\$300,000,000). Supplier agrees that it is fully responsible for all acts and omissions of Supplier Personnel, including their gross negligence or willful misconduct. The limitation shall apply on a per-incident basis, it being understood that multiple Losses stemming from the same root cause constitute a single incident.

SUPPLIER WILL NOT BE LIABLE FOR ANY INDIRECT (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS AND LOSS OF BUSINESS) OR CONSEQUENTIAL DAMAGES.

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)** except for Supplier's indemnification related to Section 16 (Data Security and Protection); (d) damages attributable to Supplier's breach of its material obligations with respect to Confidential Information; or (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 (i) law, statute, regulation, ordinance or subordinate legislation; (ii) applicable common law and (iii) any binding court order, judgment or decree (including consent agreements).

- 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 and without changing the applicable standard as to the amount of any such costs or damages. 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.
- 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 after its receipt of the Supplier's written claim. 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 Reserved.**

**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 12 (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 this 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.

**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 this 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 designated day of delivery after being timely given to an express overnight courier with a reliable system for tracking delivery, (c) five (5) days after the day of mailing, when mailed by United States mail, registered or certified mail, return receipt requested and postage prepaid, and addressed as follows:

a. In the case of physical delivery to VITA:

Virginia Information Technologies Agency  
11751 Meadowville Lane  
Chester, VA 23836  
Attention: Maureen Daniels

In the case of electronic delivery to VITA:

Maureen Daniels  
[Maureen.daniels@vita.virginia.gov](mailto:Maureen.daniels@vita.virginia.gov)

With copies to:  
commercialcontracts@vita.virginia.gov and  
LegalNotices@vita.virginia.gov

**b. In the case of physical delivery to Supplier:**

Verizon Business Network Services LLC on behalf of MCI Communications Services LLC  
d/b/a Verizon Business Services  
3011 Hungary Spring Rd  
4th Floor  
Richmond, VA 23228  
Attention: Eric Adkins, Sr. Client Partner or  
Mark Belzile, Program Delivery Executive

In the case of electronic delivery to the Supplier:

Verizon Business Network Services LLC on behalf of MCI Communications Services LLC  
d/b/a Verizon Business Services  
Attention: Eric Adkins, Sr. Client Partner or  
Mark Belzile, Program Delivery Executive  
E-mail Address: eric.r.adkins@verizon.com  
E-mail Address: mark.belzile@verizon.com

With copies to:

Verizon Business Network Services LLC. on behalf of MCI Communications Services, LLC.  
d/b/a Verizon Business Services  
1320 Courthouse Road  
Arlington. Virginia 23219  
Attention: Vice President, Deputy General Counsel  
E-mail Address: notice@verizon.com with a subject of 'OFFICIAL LEGAL NOTICE'

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 written 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 written 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
Exhibit 2	Description of Services and Solution
Exhibit 2.1	Description of Services – Voice Data Network
Exhibit 2.2	Description of Services – Cross Functional
Exhibit 2.3	Solution
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	Reserved
Exhibit 4.5	Reserved
Exhibit 4.6	Equipment Assets

Number	Name
Exhibit 4.7	Software Assets
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 - Reserved
- Attachment F - Reserved
- Attachment G – VITA Core Contractual Terms
- Attachment H – VITA Mandatory Internal Revenue Service Publication 1075 terms
- Attachment I – Reserved

**[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:

VERIZON BUSINESS NETWORK SERVICES INC., on behalf of  
MCI Communications Services, Inc. d/b/a Verizon Business  
Services

By: Anthony Recine  
Name: ANTHONY RECINE  
Title: SENIOR VICE PRESIDENT  
Date: 11/12/2020

Virginia Information Technologies Agency



## **Exhibit 1.1**

### **Definitions**

November 9, 2020

**COMMONWEALTH OF VIRGINIA  
VIRGINIA INFORMATION TECHNOLOGIES AGENCY (VITA)  
SUPPLIER STRATEGY AND PERFORMANCE DIVISION**

11751 MEADOWVILLE LANE  
CHESTER, VIRGINIA 23836

Consistent with **Section 23.7.6** of the Agreement, as used in this **Exhibit 1.1 (Definitions)**, 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, and (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.

As a component of the Integrated Services Platform, VITA seeks to maintain consistent terminology among its Integrated Suppliers. Consequently, this **Exhibit 1.1 (Definitions)** may contain certain definitions that are not currently used in this Agreement. The inclusion of definitions in this **Exhibit 1.1 (Definitions)** that are not used in this Agreement shall have no impact on the rights or obligations of the Parties hereunder.

## Definitions

Term	Definition
“N” Release Level	Means the current release level of any Software product.
“N-1” or “N-n”	Means NVP or N-Version Programming which are a method of designating program level or program currency. For example, N-1 means that the program or software in place is one (1) release level less than the now-current version of that product.
“24x7”	24 hours per day, 7 days per week or such a period of time.
“ABEND(s)”	Abnormal ENDing(s).
“Acceptance Criteria”	Means criteria agreed by VITA and the Supplier in this Agreement or otherwise in writing, to confirm that a Deliverable meets its functional, technical, design and performance specifications in all material respects.
“Acceptance” or “Accepted”	Means the written determination in VITA’s reasonable discretion and in accordance with any applicable Acceptance Criteria of the following: <ul style="list-style-type: none"> <li>(i) the successful delivery and performance of the Services or other contractual commitments at the designated location(s), including completed and successful Acceptance testing in conformance with the Requirements, or</li> <li>(ii) the compliance in all material respects of any Deliverable with the technical, design and/or functional specifications provided in this Contract, third party vendor standard documentation, or otherwise agreed upon in writing by the Parties.</li> </ul>
“Access Control List”	Means list of security access permissions attached to Equipment, Application, or network segment.
“Access Rights”	Means the privileges that are granted to a User, or perhaps to a program, to read, write and erase files in the computer system. Access rights can be tied to a particular server, to directories within that server or to specific programs and data files.
“Account Executive”	Has the meaning provided in <b>Exhibit 5 (Personnel and Human Resources Provisions)</b> .
“Account Manager”	Has the meaning provided in <b>Exhibit 5 (Personnel and Human Resources Provisions)</b> .

Term	Definition
"ACL"	Access Control List
"Action Plan"	Means a specific method or process to achieve the results called for by one or more objectives. May be a simpler version of a Project Plan.
"Actual Uptime"	Means, of the Critical Uptime, the aggregate number of minutes during which the applicable Service component is Available.
"ADA"	Americans with Disabilities Act.
"Additional Resource Charge"	Means the incremental charges set forth in <b>Exhibit 4 (Pricing and Financial Provisions)</b> for the use of Resource Units above the monthly Resource Baselines.
"Additional Services"	Has the meaning provided in <b>Section 1.12.1 (Additional Services)</b> of the Agreement.
"Ad-Hoc Report"	Means improvised, impromptu, or special purpose report that has not been previously developed.
"Adjustments"	Means adjustments to the Monthly Base Charge required to reconcile the Monthly Base Charge to the financial agreements of the Parties, and includes Additional Resource Charges, Reduced Resource Credits, Deliverable Credits, Earnbacks, errors and omissions from previous months, and similar other pricing adjustments that reconcile the Monthly Base Charge to the Charges actually owed by VITA to Supplier for Services in the applicable month.
"ADM"	Application Development and Maintenance.
"Affected Services"	Has the meaning provided in <b>Section 13.3 (Transition Out Assistance)</b> of the Agreement.
"Affiliate"	Means, with respect to an entity, any other entity or person that is then-Controlling, Controlled by or under common Control with such entity.
"After Hours"	Any time other than Business Hours.
"Agency"	See Customer.
"Agent"	Any third party independent agent of any Customer, including third party suppliers of services.
"Agreement"	Has the meaning set forth in the introductory paragraph of the Master Services Agreement, consisting of the General Terms and Conditions and the Exhibits and other attachments thereto which are incorporated therein in accordance with <b>Section 23.27 (Contract Documents)</b> of the Agreement.
"AICPA"	American Institute of Certified Public Accountants.
"Allocation of Pool Percentage"	Means the portion of the Pool Percentage Available for Allocation that is specified for a Performance Category. The total of all Allocation of Pool Percentages shall not exceed the Pool Percentage Available for Allocation.
"Annual Base Charge(s)"	Means the annual charges to VITA for Supplier's provision of the Services in accordance with the levels of Resource Unit usage included in the monthly Resource Baselines as further described in <b>Exhibit 4 (Pricing and Financial Provisions)</b> .
"ANSI"	American National Standards Institute, a non-profit organization that coordinates and supports the U.S. voluntary consensus standards for industry.
"Antivirus Software"	Means all software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that are used to monitor for, filter and detect the presence of Malicious Code and repair or remediate the effects of Malicious Code.

Term	Definition
"API"	Application Program Interface, which is an interface that a software program implements in order to allow other software to interact with it, much in the same way that software might implement a user interface in order to allow humans to use it. APIs are implemented by applications, libraries and operating systems to define how other software can make calls to or request services from them. An API determines the vocabulary and calling conventions the programmer should employ to use the services. It may include specifications for routines, data structures, object classes, and protocols used to communicate between the consumer and implementer of the API. (Wikipedia)
"Appliances"	Means a virtual machine image or hardware device consisting of a pre-configured operating system environment and integrated software to perform a specific function in support of Customer Applications (e.g. application monitor, load balancer, spam filter, etc.).
"Application Development and Maintenance"	Means specific services, functions, and responsibilities including planning, implementing and ongoing support for Applications and solutions to meet a Customer's business objectives.
"Application Server(s)"	Means any Server designated by VITA for hosting Applications.
"Applications" and "Applications Software"	Means all software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials, media, on-line help documentation and tools related thereto) that perform User or Customer-related information processing functions or support day-to-day operations (including the supporting documentation, media, on-line help facilities, and tutorials), or otherwise used in the provision of Services by Supplier. Applications Software does not include the tools, utilities, or Operating Software or Systems Software used to deliver Applications Software.
"ARC"	Additional Resource Charge.
"Architecture" or "Technical Architecture"	Means the design, process, strategies, and specification of the overall structure, logical components, and the logical interrelationships of Equipment and Software, including System Software, a Network, or other reasonably related conception.
"Asset Management"	Means the business processes responsible for tracking and reporting the value and ownership of assets throughout their lifecycle.
"At-Risk Amount"	Means, for any month during the Term, a percent of the Service Level Invoice Amount, which is the maximum amount that the Supplier will have at risk for Service Level Credits for such month as set forth in <b>Exhibit 3.1 (Service Level Matrix)</b> .
"ATM"	Asynchronous Transfer Mode.
"ATOT"	At Time of Test.
"Audio Conferencing"	The ability to have multiple audio lines connected with each other for the purpose of having a multi-point phone call.
"Audit Period"	Means the period that Supplier is required to retain records subject to audit by VITA under this Agreement, as required under applicable law, VITA Rules or otherwise requested by VITA.
"Audit Trail"	Means a record of transactions in an information system that provides verification of the activity of the system.
"Auto Attendant"	Means all requirements of VITA or, including administrative, scheduling and programming, for automated attendant functionality which can manage the flow of incoming calls and outgoing calls, including the queuing of calls, use touch-tone or speech input, route callers to specific

Term	Definition
	destinations, provide access to prerecorded information, and can take messages 24x7.
“Availability Management”	Means processes to ensure services are available as contemplated by this Agreement.
“Availability” or “Available”	Means that the full functionality of a Service component is available for use by the Users so that it is not degraded in any material respect.
“Availability Plan”	Means a plan to ensure that existing and future Availability requirements for Services can be provided effectively and efficiently.
“BAFO”	Best and Final Offer.
“Bandwidth”	The total frequency band, in hertz, allocated for a channel.
“Base Charge(s)”	Means, as applicable, the monthly charge to VITA for Supplier’s provision of the Services in accordance with the levels of Resource Unit usage included in the monthly Resource Baselines as further described in <b>Exhibit 4 (Pricing and Financial Provisions)</b> .
“Base Year Index”	Has the meaning set forth in <b>Exhibit 4 (Pricing and Financial Provisions)</b> .
“Batch”	Means the daily or nightly process which takes pending transactions and performs the work associated with them.
“BCM”	Business Continuity Management.
“BCP”	Business Continuity Planning.
“BCRS”	Business Continuity and Recovery Services.
“BIA”	Business Impact Analysis.
“BRM”	Business Relationship Manager, which are persons provided by Supplier to perform the Business Relationship Management function (see CAMalso Customer Account Manager).
“Broadband”	Means high-speed Internet connectivity, such as might be provided via Digital Subscriber Line, cable modem, or 4G Cellular.
“Business Continuity (Services)”	Means the overall, company-wide plans and activities that are intended to enable continued business operation in the event of any unforeseen interruption (for example, plans and activities to move a department or business unit to a new location in the event of a business disruption). The Business Continuity Services consist of the Business Recovery related Services.
“Business Continuity Management”	Means the higher-level process of ensuring business continuity, of which Information Technology Service Continuity Management (ITSCM) is a part.
“Business Day”	Means each day from Monday through Friday, excluding Commonwealth-designated holidays.
“Business Hour(s)”	Unless otherwise indicated, Business Hours are 7 a.m.-7 p.m. Eastern Standard/Daylight Time on Business Days.
“Business Process Management System” or “BPMS”	Means the systematic approach to making an organization's workflow more effective, more efficient and more capable of adapting to an ever-changing environment. Includes tools with design, modeling, execution, monitoring, optimization and re-engineering of business process capabilities.
“Business Rules Management System” or “BRMS”	Means a software system used to define, deploy, execute, monitor and maintain the variety and complexity of decision logic that is used by operational systems within an organization or enterprise.
“CAB/EC”	CAB/Emergency Committee.
“CAB/Emergency Committee”	Means a subset of the full CAB with authority to make emergency decisions. ITIL: An emergency meeting of the CAB, usually with a reduced number of members to consider urgent, high impact Changes.

Term	Definition
"Cabling"	Means the physical connection between Equipment and a wall jack (i.e., the connections outside the wall), including physical cabling media, peripheral cabling used to interconnect electronic equipment, all terminating hardware and cross-connect fields, but not including conduits and pathways.
"Call(s)"	Means any problem that is: (i) opened at the Service Desk due to a received contact; (ii) recorded by an automated resolution process; (iii) detected; or (iv) detected by a support technician who enters the service request. A Call is considered a subset of Contacts.
"Capacity Management"	Means the responsibility for ensuring that the Capacity of the IT infrastructure matches the evolving demands of the business in a cost-effective and timely manner.
"Capacity Management Database"	Means could be implemented as multiple physical databases used to generate Capacity Management reporting.
"Capped T&M"	Has the meaning set forth in <b>Exhibit 4 (Pricing and Financial Provisions)</b> .
"Carrier"	See "Transport Vendor."
"Cascade"	Means a multiple move in order to replace one. Referenced in an IMAC (Install, Maintenance, Addition, Change) when an asset that still has a useful life but is no longer the current version or standard. That asset can be transferred (a cascade) to another location/user/department that does not require a current version or standard. Or, one user requires an upgrade to an asset and the user's "old" equipment is still current and that "old" equipment is moved (cascade) to another user.
"CCH"	Computerized Criminal History.
"CCMIS"	Call Center Management Information System.
"CD"	Compact Disk.
"CDB"	Capacity Management Database.
"CDR"	Call Detail Reporting.
"CD-ROM"	Compact Disk Read Only Memory.
"Cellular"	Means a wireless network supporting mobile phones and digital communication for mobile devices.
"Centrex Services"	Means Voice Switch-like services provided from a Supplier or Third Party premise. Centrex includes all the equipment within this premise, any Transport services connecting to the VITA or designed site(s), and all connections to the PSTN. Centrex further includes all premise equipment including handsets, proprietary handsets, cabling and wiring, used by Supplier in connection with its provisioning of voice services to the Users workspace.
"CEO"	Chief Executive Officer.
"CESC"	Commonwealth Enterprise Services Center.
"CF"	Cross-Functional.
"CFO"	Chief Financial Officer.
"Change"	has the meaning set forth in <b>Section 1.11 (Changes to Services)</b> of the Agreement.
"Change Advisory Board" ("CAB")	Means the board or other group that considers Requests for Change (RFCs) and recommend implementation or rejection based on business needs.
"Change Control Procedures"	Means the procedures that govern Changes, including (1) the process by which a Party may request a Change; (2) the process to be followed in analyzing the effects of, and deciding whether to implement, a Change, and (3) the manner in which any agreed upon Change will be

Term	Definition
	implemented, which shall in all events be consistent with and subject to the requirements and rules applicable to Changes set forth in <b>Section 1.11 (Changes to Services)</b> of the Agreement.
"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).
"Change Management"	Means the processes relating to planning and performing all changes in the Customers' IT environments pertaining to the Services, including changes to individual components and coordination of changes across all components. The Change Management processes will support and include checkpoints to determine any potential or required Change Control Procedures, and will endeavor to make changes in a controlled manner without any unnecessary disruption.
"Change Request Authorization(s)"	Means the process and any related forms required to request and authorize changes requested by VITA, where such changes are within the scope of the existing Services.
"Chargeback"	Means the services so described <b>Exhibit 4 (Pricing and Financial Provisions)</b> involving the allocation of Charges among Customers.
"Chargeback System"	The system for Chargeback.
"Charges"	Means the charges payable to the Supplier, as expressly provided in the Agreement, for performing its Services.
"CI(s)"	Configuration Item(s).
"Claim"	Means any demand, or any civil, criminal, administrative, action, or proceeding made, commenced or threatened against an entity or person by an unaffiliated third party; provided that for the purposes of this definition, an employee or Customer of either Party is considered an unaffiliated third party.
"Cloud"	Means a collection of services and infrastructure to provide hosted computing capacity or software services. Cloud services are typically shared by a supplier across multiple customers and are available via the public Internet. Cloud may also refer to infrastructure hosted privately for VITA or other Customers and providing similar services to the public Cloud.
"CMDB"	Configuration Management Database.
"CMIS"	Capacity Management Information System.
"CMM"	Capability Maturity Model.
"CMO"	Current Mode of Operations.
"CMS"	Configuration Management System.
"CODEC"	Coder/Decoder.
"COE"	Common Operating Environment.
"COLA"	Cost of Living Adjustment.
"Collaborative Applications"	Means and includes legacy Applications containing functionality to enable electronic communication and messaging; work group collaboration;

Term	Definition
	information transfers; frequently-asked questions (FAQs); and similar Application that allow collaborative interaction and receipt/transfer of data and information both within and outside of VITA and Customers. Examples of current and/or future Collaborative Applications include, but are not limited to, Lotus Notes, electronic mail, calendaring, whiteboarding, version control systems, electronic newsletters, and instant messaging.
"Colocation"	Data Center facility in which space is available for rent for servers and other computing hardware. Colocation suppliers provide the building, cooling, power, bandwidth and physical security, while the Customer provides servers and storage.
"Commencement Date"	The Commencement Date is December 15, 2018.
"Commercial off-the-shelf" ("COTS")	Means Equipment and/or Software, as applicable, that is readily available to the public from a Third Party or Supplier.
"Committed Access Rate (CAR)"	The amount of Bandwidth to which Customer subscribes on a logical Port by logical Port basis.
"Commonwealth"	Means the Commonwealth of Virginia, the government of the Commonwealth of Virginia, including its agencies and departments.
"Commonwealth Works"	Means any materials (including documents, drawings, designs, computer code, or other tangible form or medium in which a work of authorship or expression is fixed, or any invention, business method, or process materials) and Intellectual Property that were acquired, licensed, or developed by VITA or another Customer either (a) prior to the commencement of the Supplier's work on behalf of VITA or Customer under the Agreement, or (b) independent of the Agreement.
"Compliance"	Means, with respect to Software, Equipment, Systems or other contract Deliverables to be implemented, designed, developed, maintained, modified, enhanced, delivered, integrated, installed and/or tested by Supplier, compliance in all material respects with the Specifications.
"Component"	Means a grouping of services, hardware, software functionally, or a separate software object in the solution that has the ability to "stand alone" or "integrate with other components" as required.
"Comprehensive Infrastructure Agreement" or "CIA"	Means the Comprehensive Infrastructure Agreement, dated as of November 14, 2005, by and between the Commonwealth, acting through VITA and Northrop Grumman Systems Corporation, the successor-in-interest by merger to Northrop Grumman Information Technology, Inc., as amended.
"Computer Virus"	Means any malicious code, program, or other internal component (e.g., computer virus, computer worm, computer time bomb, or similar component), which could damage, destroy, alter or disrupt any computer program, firmware, or hardware or which could, in any manner, reveal, damage, destroy, alter or disrupt any data or other information accessed through or processed by such software in any manner.
"Conditional Event"	Means 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 such completed Deliverable.
"Conferencing Network"	Means the portion of VITA's or other Customer's Network consisting of Conferencing Premise Equipment, Software, Transport Systems, Interconnect Devices, and Cabling used to create, connect, and transmit voice and video to Users.

Term	Definition
“Conferencing Premise Equipment”	Means the Equipment, features, accessories, peripherals, and Cabling supported or used by Supplier in connection with its provision of Conferencing Services to the Users, including room-based and cart-based video and audio conference equipment (e.g., audio/video switching equipment, control computers, monitors, cameras, document viewers, CODEC, sound systems, video and audio conferencing bridges, mixers, multi-point bridging equipment, studio room equipment, and associated diagnostic equipment), and all additions, modifications, substitutions, upgrades, or enhancements to such Equipment.
“Confidential Information”	Has the meaning set forth in <b>Section 17.1 (Confidential Information)</b> of the Agreement.
“Configuration”	Means the parameters that instruct a Configuration Item how to perform its designated Function.
“Configuration Item” (“CI”)	Means a component of an IT infrastructure - or an item, such as a request for change, associated with an infrastructure - that is (or is to be) under the control of Configuration Management. CIs may vary widely in complexity, size and type -from an entire system (including all hardware, software and documentation) to a single software module or a minor hardware component.
“Configuration Management”	Means the process of identifying and defining Configuration Items in a system, recording and reporting the status of Configuration Items and Requests for Change, and verifying the completeness and correctness of the Configuration Items.
“Configuration Management Database” (“CMDB”)	A Service Management System as defined and described in <b>Exhibit 2 (Description of Services and Solution)</b> .
“Connectivity”	Means the ability to access and exchange data, voice, and/or video electronic impulses between various Infrastructure components and with external sources as approved by VITA and provided to Users.
“Consent”	Means consent, approval, authorization, clearance, exemption, waiver, or similar affirmation by any Person given in accordance with the Agreement.
“Contract Change”	Means any change to any provision of the Agreement, in accordance with the applicable process.
“Contract Records”	Means complete and accurate records of, and supporting documentation for, all Charges, all Customer data and all transactions, 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 the Agreement.
“Contract Year”	Means each twelve (12) month period commencing at 12:00 a.m. on the Commencement Date and each twelve-month anniversary thereof during the Term, including during any extensions of the Term.
“Control” (and its derivatives)	Means, with respect to any Entity, the power to direct or cause the direction of management or policies of such Entity, whether through the ownership of voting securities, by contract or otherwise.
“Controlled Penetration Tests”	Means a type of Assessment that tests the vulnerability of Systems to unauthorized external interventions or improper uses.
“CONUS”	Means the continental United States.
“Continuous Service Improvement” or “CSI”	Means Supplier's general obligations to continually evolve services and enhance quality, at minimum in accordance with industry standards, in accordance with <b>Section 2.5 (Quality Assurance and Continuous Improvement)</b> of the Agreement.

Term	Definition
"CPE"	Customer Premises Equipment.
"CPE Services"	CPE related deployment, maintenance, assessment, rental, lease and other Service furnished to Customer in connection with the CPE or Customer Equipment.
"COTS"	Commercial Off The Shelf.
"COV" or "COVA"	Means the Commonwealth.
"CPU"	Central Processing Unit.
"CRAC"	Computer Room Air Conditioning.
"Critical Applications"	Means the Applications designated as Critical Applications in the Service Management Manual.
"Critical Deliverables"	Means the One-Time Deliverables and Recurring Deliverables that have associated Deliverable Credits payable to VITA in the event Supplier fails to successfully and timely complete such Deliverables.
"Critical Service Level"	Means any Service Level designated as "critical" by VTA, and with respect to which VITA may become entitled to receive Service Level Credits as a result of Supplier's failure to satisfy the associated Service Level standards.
"CRM"	Customer Relationship Management.
"Cross-Functional Services"	Means those Services performed in connection with performing, and in support of, each of the Services, including those Services described in <b>Exhibit 2.2 (Description of Services - Cross-Functional Services)</b> . Cross-Functional Services typically integrate multiple standalone functions into a seamless delivery, often requiring multiple suppliers (including MSI, Service Tower Suppliers, Third Party Vendors, and Customers) to participate together in order to achieve the desired business outcome.
"CRS"	Client Registration System.
"CSS"	Cascading Style Sheets.
"CTI"	Computer Telephony Integration.
"Customer"	Means the Public Body(ies) designated by VITA from time to time to receive Services, as permitted by applicable Law. Customer includes VITA in its capacity as a recipient of the Services.
"Customer Account Manager" or "CAM"	Means an individual within VITA who is responsible for establishing and maintaining relationships with a set of VITA Customers and managing overall Customer satisfaction. CAMs work closely with Customers to identify issues and bring together and direct teams to resolve issues raised. The CAM is available to assist, provide guidance, and bring value to the Customer's IT needs. CAMs are members of the Platform Relationship Office and performs the Business Relationship Manager (BRM) function.
"Customer Edge (CE)"	The edge of, or point in which customer traffic enters or exits, the Customer network.
"DASD"	Direct Access Storage Device.
"Data Center"	Means any controlled or consolidated location where Equipment resides for the delivery of Services to VITA and the Customers. Data Centers generally include environmental controls (air conditioning, fire suppression, etc.), backup power supplies, network connections, and high security.
"Data Center LAN"	System of Local Area Networks inside the Data Center that provide Network switching, routing, load balancing and other services.
"Database"	Means a structure set of data stored in a computing Device.

Term	Definition
"Database Administrator" ("DBA")	Means an individual responsible for the design and management of databases and for the implementation of the Database Management System. DBA includes "logical" and "physical" database administrators.
"Database Management System" ("DBMS")	Means a system that controls the organization, storage, retrieval, security, and integrity of data in a database.
"Dedicated Access/Termination"	An access line Service consisting of a continuously connected circuit between a Customer Site or serving telephone company central office and a Supplier terminal, available to Customer on a full-time, unshared, basis, which is used for the origination or termination of Services.
"Days"	Means, whether or not capitalized, calendar days unless otherwise indicated as Business Days.
"DBA"	Database Administrator/Administration.
"DBMS"	Database Management System.
"Definitive Hardware Store" ("DHS")	Means an area set aside for secure storage of hardware spares.
"Definitive Software Library" ("DSL")	Means a secure software library into which the master copies of all Software (except those version of VITA's and Customers' Application Software not released into the production environment) and associated documentation is stored and from here its control and release is managed.
"Deliverable"	Means Software, Documentation, plans, reports, data, Work Product, and any other Materials, items or events, in each case described or itemized as something that is developed, prepared or created and delivered or required to be developed, prepared or created and delivered or made available to VITA or other Customer as part of the Services, including the development or creation of Work Product. It also means any improvements, enhancements, modifications or customization made to the Supplier Materials (described in <b>Section 11.2 (Supplier Materials)</b> of the Agreement) as part of or in the course of performing the Services.
"Deliverable Credits"	Means the amount Supplier shall pay or credit to VITA, as specified in <b>Exhibit 3.3 (Critical Deliverables)</b> and <b>Exhibit 3.1 (Service Level Matrix)</b> , or as established by VITA as part of the Project 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. Deliverable Credits includes credits associated with Critical Implementation Deliverables.
"Demarcation"	The point where the access circuit is delivered. For jointly used office buildings, it is often a common entrance point for telecommunication providers, which may not be the Customer's physical location.
"Development" or "Development Environment"	Means the Systems environment in which Software and databases are initially designed and created. Customers may have more than one Development Environment.
"Description(s) of Services"	Means <b>Exhibit 2 (Description of Services and Solution)</b> and its attachments, with respect to Supplier or other applicable Integrated Supplier. Without limiting the scope of the definition of Services in <b>Section 1 (Services)</b> of the Agreement, the Description of Services describe certain express duties, obligations and responsibilities of Supplier with respect to the Services, the functions being performed, and other terms specific to the applicable Services.
"Development Tool"	Means all software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials, and

Term	Definition
	media related thereto) that are used in the development, testing, deployment, and maintenance of Software.
"Device"	Means a piece of equipment that has been made for a special purpose. It could be a combination of Hardware, Peripherals, Cables, and Device-specific Software.
"DHCP"	Dynamic Host Configuration Protocol.
"DHS"	Definitive Hardware Store.
"Digital Subscriber Line" ("DSL")	Means a service providing Internet access or other Connectivity by transmitting digital data on the public switched telephone network.
"Disabling Code"	Means (i) any code, program, or sub-program whose knowing or intended purpose is to damage or interfere with the operation of the System containing the code, program or sub-program, or to halt, disable or interfere with the operation of the Software, code, program, or sub-program, itself, or (ii) any device, method, or token that permits any Person to circumvent the normal security of the Software or the System containing the code.
"Disaster"	Means an event or series of events constituting a disaster under the terms of the Disaster Recovery Plan or under the Supplier Disaster Recovery Plans.
"Disaster Recovery" ("DR") (Services)	Means the process of following specific advance arrangements and procedures in response to a disaster, resumption of the critical business functions within a predetermined period of time, minimizing the amount of loss, and repairing or replacing the damaged facilities as soon as possible. The Disaster Recovery Services consist of the Disaster Recovery related Services and include support and coordination with the Business Continuity Services.
"Disaster Recovery Plan" ("DRP")	Means the plan to execute Disaster Recovery Services.
"Disaster Recovery Planning"	Means, as defined by the ITIL, the series of processes that focus only upon the recovery processes, principally in response to physical disasters that are contained within BCM (Business Continuity Management).
"Dispatch"	A Customer Service Request that results in Supplier going on to, or attempting to go on to, a Customer Site.
"DLSw"	Data Link Switching.
"DMZ"	Demilitarized Zone (in network security, a network that is isolated from, and serves as a neutral zone between, a trusted network (for example, a private intranet) and an untrusted network (for example, the Internet), provided that one or more secure gateways usually control access to the DMZ from the trusted or the untrusted network).
"DNS"	Domain Name System.
"DOB"	Date of Birth.
"Document Data Store"	Means the repository of information maintained by the MSI and designated as such for use in support or delivery of the Services.
"Documentation"	Means, collectively, written materials, documentation, specifications, technical manuals, training materials, guides, flow diagrams, file descriptions, notes and other written information, including as may be associated with a software Deliverable, System or otherwise in connection with the Services.
"DOE"	Date of Employment.
"Downtime"	Means the time that a particular System, Application, Software, Equipment, Network or any other part of the Services is not Available during the Measurement Window.

Term	Definition
"DPV"	Delivery Point Validation.
"DR"	Disaster Recovery.
"DRL"	Disaster Recovery Level.
"DRP"	Disaster Recovery Plan.
"DSL"	Means, depending on context, either (a) Definitive Software Library or (b) Digital Subscriber Line.
"DSU"	Data Service Unit.
"DTE"	Data Terminal Equipment.
"DWDM"	Dense Wave Division Multiplexing (DWDM) is a Layer 1 transport technology that combines multiple optical data interfaces onto one optical fiber pair, with each signal carried on its own separate light wavelength.
"DWR"	Dedicated Wavelength Ring (DWR) is an optical service based on Dense Wave Division Multiplexing (DWDM) technology. DWR networks are designed as a survivable ring architecture, which operates as a single network, allowing customers to add and drop various services or channels at each location.
"Earnback"	Means the methodology used to determine the "earning back", or reversal, of a Service Level Credit as described in <b>Exhibit 3 (Reporting and Service Level Management)</b> .
"EBT"	Electronic Benefit Transfer.
"ECA"	Economic Change Adjustment.
"EDI"	Electronic Data Interchange.
"EDM"	Employee Data Management.
"EDSM"	Enterprise Distributed Systems Management.
"EE"	Enterprise Extender.
"EEO"	Equal Employment Opportunity.
"Effective Date"	Has the meaning set forth in the first paragraph of the Agreement.
"EFT"	Electronic Fund Transfer.
"Electronic Self-Help"	Any use of electronic means to exercise Supplier's license termination rights, if allowable pursuant to this Agreement, upon breach or cancellation, termination or expiration of the Agreement.
"ELIN"	Emergency Location Identification Number – The number provided to emergency services when a 911 call is placed used to determine the location from which the call was placed.
"EMEA"	Europe, Middle East and Africa.
"Enterprise Service Bus" or "ESB"	Means, the software mechanism to connect different applications across the enterprise for information exchange and sharing. Organizations can use the ESB for their particular units or across multiple organizations. This service component includes a service gateway as well as reverse proxy capability.
"Environment"	Means a subset of the IT infrastructure that is used for a particular purpose. For Example: Live Environment, Test Environment, Build Environment. Also used to reference physical Environments such as facilities, air conditioning, power systems, etc.
"Environmental Controls"	Means any uninterruptible power systems and related environmental conditioning/control equipment including; battery systems, converter, inverter, power switches, generators, fire suppression system, and related cooling systems).
"EOL"	End of Life.
"EoS"	End of Support Life.

Term	Definition
"EP"	Emulation Program.
"EPLS"	Excluded Parties List System.
"EPM"	Enterprise Performance Management.
"Equipment"	Means the computer, telecommunications, and facility-related hardware, equipment, and peripherals (and all modifications, replacements, Upgrades, enhancements, documentation, materials, and media related thereto) that are used in connection with the Services, including by Supplier.
"ERAS"	Enterprise Remote Access Services.
"ERISA"	Employee Retirement Income Security Act.
"ERP"	Enterprise Resource Planning.
"ESB"	Enterprise Service Bus.
"ESC"	Executive Steering Committee.
"EU"	European Union.
"EUC"	End-User Computing.
"Event"	Means an Incident, including failures of service delivery, security breaches, etc.
"Expected Service Level"	Means the desired and expected level of performance for a Service Level, as set forth in <b>Exhibit 3.1 (Service Level Matrix)</b> .
"Expected Service Level Default"	Means the Supplier's level of performance for a particular Service Level fails to meet the applicable Expected Service Level (but does not fail to meet the applicable Minimum Service Level), as specified in <b>Exhibit 3 (Reporting and Service Level Management)</b> and has failed to meet such Expected Service Level for four (4) or more occurrences in any rolling twelve (12) month period.
"Extranet"	Means the portion of VITA's WAN, consisting of Equipment, Software, Transport Systems, Interconnect Devices, Wiring, and Cabling that are used to create, connect, and transmit data, voice, and video signals to, within, or among 'TA's customers, external partners, and Third Party Vendors. The Extranet includes web sites that provide information to internal employees and also have secure areas to provide information and conduct business with certain Third Parties. The Extranet is not a public entity, but a private network whose access is provided over the public Internet. The Extranet Network may be delivered via a public circuit-switched service or VPN. The Extranet is subject to VITA Rules, including security policies.
"FAQ(s)"	Means a frequently asked question or list of such questions.
"FCC"	Federal Communications Commission.
"FDDI"	Fiber Distributed Data Interface.
"FDMA"	Frequency Division Multiple Access.
"Federal Tax Information (FTI)"	Means any Federal tax information, including without limitation, and tax return-derived information received from the IRS.
"FIPS"	Federal Information Processing Standards (Specific FIPS 140-2)
"Fiscal Year"	Means the fiscal year of the Commonwealth, which is the 12-month period that commences July 1st and ends June 30 <sup>th</sup> . A reference to the Fiscal Year of another entity shall refer to the fiscal year of that entity.
"FISMA"	Federal Information Security Management Act of 2002.
"FMLA"	Family Medical Leave Act.
"FMO"	Future Mode of Operations.

Term	Definition
"FOIA"	Virginia Freedom of Information Act, §2.2-3700 <u>et seq</u> of the <u>Code of Virginia</u> .
"Force Majeure Event"	Means an extraordinary event, such as fire, flood, pestilence, earthquake, elements of nature or acts of God, riots, or civil disorders; provided the non-performing Party is without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and could not reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means (including, with respect to the Supplier, by the Supplier meeting its obligations for performing disaster recovery and business continuity services as described in this Agreement).
"Forward Schedule of Changes" ("FSC")	Means a schedule that includes detail of all the changes approved for implementation and their proposed implementation dates.
"FRM"	Financial Responsibilities Matrix. May also refer to Financial Scope and Responsibilities Matrix.
"FTP"	File Transfer Protocol.
"Full Time Equivalent" ("FTE")	Means a level of effort, excluding vacation, holidays, training, administrative and other non-productive time (but including a reasonable amount of additional work outside normal business hours), equivalent to that which would be provided by one person working full time for one year. Unless otherwise agreed, one FTE will be 1,920 productive hours per year. Without VITA's prior written approval, one dedicated individual's total work effort cannot amount to more than one FTE.
"FTE Effort Hours"	Means, with respect to a particular task, assignment or Project, only the hours spent actually working to complete such task, assignment, or Project, but not any other activities. For the avoidance of doubt, FTE Effort Hours will not include any hours for Supplier Personnel delivering Services already covered under the Base Charges (as adjusted by ARCs or RRCs).
"FTE Rates"	Means, in relation to each FTE, the hourly and monthly rates specified in <b>Exhibit 4 (Pricing and Financial Provisions)</b> for a particular skill category or position.
"FTE Services"	Means Services that VITA or Customer agree are to be provided on an FTE Rate basis.
"Full Time Professional" ("FTP")	Means the productive level of effort, excluding non-productive time such as travel, vacation, holiday, training, education, marketing, administrative staff meetings, medical leave, and military leave, equivalent to that which would be provided by one (1) person working full time over the course of such month, provided that one (1) person's total effort during any month shall not amount to more than one (1) FTP in such month.
"Functions"	Means functions, responsibilities, activities, deliveries, and tasks necessary, integral, or closely related to the performance of services.
"G/L"	General Ledger.
"GAAP"	Means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination.

Term	Definition
"Gateway Services"	Means connectivity between network segments, which may include Transport, Equipment, firewalls, or network address translation.
"General Terms and Conditions"	Has the meaning given in the introductory paragraph of this Agreement (i.e., the introductory paragraph of the Master Services Agreement through <b>Section 23.27 (Contract Documents)</b> ).
"Governmental Authority"	Means any domestic (federal, state or local) or foreign government or governmental, regulatory or administrative authority, agency, commission, board, bureau, court or instrumentality of any kind.
"GPS"	Global Positioning System.
"GUI"	Graphic User Interface.
"Hard IMAC"	Means an approved IMAC request received from VITA or Customer, which requires the Supplier to dispatch a technician to the affected Site or User's location in order to perform such required IMAC. A Hard IMAC shall include a Soft IMAC, if necessary.
"Hardware"	See "Equipment."
"HCM"	Human Capital Management.
"Health Record"	Means any written, printed or electronically recorded material maintained by a health care entity in the course of providing health services to an individual concerning the individual and the services provided. "Health record" also includes the substance of any communication made by an individual to a health care entity in confidence during or in connection with the provision of health services or information otherwise acquired by the health care entity about an individual in confidence and in connection with the provision of health services to the individual (§ 32.1-127.1:03, <u>Code of Virginia</u> ).
"Help Desk"	Means the facilities, associated technologies, and fully trained staff who respond to calls, coordinate all problem and request management activities, and act as a single point of contact for Users.
"HIPAA"	Means the Health Insurance Portability & Accountability Act of 1996, 42 U.S.C. § 201 et seq., and all regulations promulgated thereunder.
"HITECH ACT"	Means the Health Information Technology Act of 2009, 42 U.S.C. § 17901 et seq., and all regulations promulgated thereunder.
"HR"	Human Resources.
"HRIS"	Human Resources Information Services.
"HRIT"	Human Resources Information Technology.
"HSC"	Hardware Service Charge.
"HTML"	Hyper Text Markup Language.
"HVAC"	Heating, Ventilation, Air Conditioning Systems.
"Hybrid Cloud"	Means a service to provide Connectivity directly from a private Network to a Cloud supplier without using the public Internet as an intermediary.
"IAM"	Identity and Access Management.
"ICE"	Integrated Computing Environment.
"ID"	Identification.
"IEEE"	Institute of Electrical and Electronics Engineers.
"IES"	Information Exchange System.
"IETF"	Internet Engineering Task Force.
"ILEC"	Local Telco Providers.
"IMAC(s)"	Means and includes installations, moves, adds, changes, de-installations, and cascades for Equipment, Software, and related services at designated VITA Sites. IMACs will include: Hard IMACs, Soft IMACs, and Project IMACs.

Term	Definition
"Impact"	Means the measure of the business criticality of an Incident, Problem or Request for Change. Often equal to the extent of a distortion of agreed or expected Service Levels.
"Implementation Milestones"	Means a key activity or Deliverable to be provided by Supplier in support of Implementation.
"Implementation Plan"	Means the plan(s) to which an applicable Implementation will be performed.
"Implementation Services"	Has the meaning provided in <b>Section 9.1 (Implementation Generally)</b> of the Agreement.
"IMS"	Information Management System.
"Incident"	Means an event which is not part of the standard operation of a service and which causes or may cause disruption to or a reduction in the quality of services and VITA and/or other Customer productivity. Incident is a common term of ITIL and ITSM disciplines and has the meaning therein.
"Incident Management"	Means process with the primary goal to restore normal Service operations as quickly as possible and minimize the adverse impact on business operations, thus ensuring that the best achievable levels of service quality and Availability are maintained.
"Incident Management System"	Means an automated system used to track the status of Incident Records defined and maintained by Service Desk personnel.
"Incident Record"	Means the information captured by Service Desk personnel about an Incident.
"Income Tax"	Means any tax on or measured by the net income of a Party (including taxes on capital or net worth or revenue that are imposed as an alternative to a tax based on net or gross income), or taxes which are of the nature of excess profits tax, minimum tax on tax preferences, alternative minimum tax, accumulated earnings tax, personal holding company tax, capital gains tax, or franchise tax for the privilege of doing business.
"Incumbent Supplier"	Incumbent Supplier means a supplier that provides or has provided services to VITA or any Customer, where any portion of such services have been or will be replaced or displaced by Supplier's performance of Services.
"Inflation Sensitive Charges"	Has the meaning set forth in <b>Exhibit 4 (Pricing and Financial Provisions)</b> .
"Information Security Management System" or "ISMS"	Means a System for performing Security Management as further described in <b>Exhibit 2 (Description of Services and Solution)</b> .
"Information Technology Infrastructure Library" or "ITIL"	Means a world-wide recognized best-practice framework for IT service management (ITSM) that focuses on aligning IT services with the needs of business. The Information Technology Infrastructure Library (ITIL) is produced by the Office of Government Commerce (OGC) located in the United Kingdom.
"Infrastructure"	Means the entire portfolio of Equipment, System Software, and Network components required for the integrated provision and operation of VITA and Customer's IT systems and Applications.
"Infrastructure Server(s)"	Means non-billable Servers, which may include: Domain Services, Enterprise Security, Enterprise Backup, Enterprise Monitoring, Enterprise Scheduling, and Software Distribution. As applicable, clarification of such Servers is provided in <b>Exhibit 4 (Pricing and Financial Provisions)</b> .
"Infrastructure Stack Software"	Means Antivirus Software, Infrastructure Management Software, Operating Software, and Utility / Monitoring & Management Software used in the operation of Service Tier Matrix Servers.

Term	Definition
"Initial Test or Initial Test Environment"	Means the system environment that closely simulates Development; it is the first stage of testing and is often subject to numerous changes. Customers may have more than one Initial Test Environment.
"In-Scope"	Means those Services or resources that are the subject of Supplier's obligations under the Agreement.
"Install" or "Installation"	Means the on-site installation and testing of a Device which includes checking that the Device and associated Software are functional with operational network connectivity and that the associated peripherals are attached and working correctly. The Installation includes any required configuration changes and installation of any approved Software.
"Instance"	Means one running operating system kernel process that manages: (i) all of or a discrete subset of the Application Server's persistent storage (disk), volatile storage (memory), and central processing units; and (ii) a single list of processes (process table). Depending on the Server's configuration, one or more Instance may run on a single Application Server. Instances in a clustered configuration shall be deemed to be discrete Instances, though each Instance within a cluster shall accommodate different Complexity categorization, depending on VITA requirements.
"Integrated Services Platform" or "Platform" when used as shorthand for Integrated Services Platform	Has the meaning set forth in <b>Section 1.4 (Managed Environment)</b> of the Agreement.
"Integrated Supplier"	Has the meaning set forth in <b>Section 1.4 (Managed Environment)</b> of the Agreement.
"Integrity"	Means, with respect to data, that the data is complete, fully accessible and operationally functional (i.e., the protection of data or information system from intentional or accidental unauthorized modification).
"Intellectual Property"	Means: (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, database rights, moral rights, neighboring rights and mask works; (b) trademark and trade name rights and similar rights and associated goodwill; (c) trade secret rights, know-how, design guides, design rights, methodologies, developmental tools, techniques, hardware, software, systems, technologies, skills, and processes (including any enhancements, improvements, or modifications thereto); (d) patents and industrial property rights; (e) inventions, discoveries, designs, processes, or other proprietary rights in intellectual property of every kind and nature; and (f) rights in or relating to registrations, renewals, extensions, combinations, divisions, reversions and reissues of, and applications for, any of the rights referred to in subsections (a) through (e) of this sentence.
"Intellectual Property Rights"	Means all past, present, and future rights in and to Intellectual Property that may exist or be created under the Laws of any jurisdiction in the world.
"Intelligent Routing"	Means routing callers based a number of parameters, including information on the caller, queue status, agent status and the present situation.
"Interconnect Devices"	Means the devices used to enable a portion of the network to connect with another portion of the Network, either in a dedicated or dialup mode (e.g., modems, bridges, routers, hubs, switches, gateways).

Term	Definition
"Internet Network"	Means the portion of VITA's or Customer's Network, consisting of Equipment, Software, Transport Systems, Interconnect Devices, Wiring, and Cabling that are used to create, connect, and transmit data, voice and video signals to the public Internet.
"Intrusion Detection"	Means a method of monitoring traffic on the network to detect break-ins or break-in attempts, either manually or via software expert systems.
"IOCP"	Input Output Configuration Program.
"IP"	Internet Protocol.
"IPSEC"	Internet Protocol Security Protocol.
"IPX"	Internet Package Exchange.
"IRPD"	Intelligent Routing Predictive Dialing.
"IRS"	Means the Internal Revenue Service; a division of the U.S. Treasury Department responsible for collecting taxes.
"IS"	Information Services.
"ISDN"	Integrated Services Digital Network.
"ISP(s)"	Internet Supplier(s).
"IT"	Information Technology.
"IT Service Continuity Management"	Means the process of ensuring that identified IT Services will be available during abnormal situations. It typically involves a detailed assessment of the business risk of key IT services being lost, and then identifies countermeasures and plans to prevent - or recover from - identified contingencies.
"ITAMM"	IT Availability Metrics Model.
"ITDN"	International Trade Data Network.
"ITISP"	Information Technology Infrastructure Services Program.
"ITSCM"	Information Technology Service Continuity Management.
"itSMF"	IT Service Management Forum.
"ITU-T"	International Telecommunications Union – Telecommunications Standardization Sector.
"IVR"	Interactive Voice Response.
"JSR 168"	Java Specification Report 168.
"Key Measurement"	Means those Service Levels for which there is currently no Service Level Credits allocation, and are described in <b><u>Exhibit 3 (Reporting and Service Level Management)</u></b> .
"Key Personnel"	Has the meaning provided in <b><u>Exhibit 5 (Personnel and Human Resources Provisions)</u></b> .
"Key Users"	A subset of Users identified to receive specialized services or perform functions as further indicated within the Service Management Manual or otherwise pursuant to the Agreement.
"Khz"	Kilohertz.
"Kick off Date"	The date of Acceptance by VITA of the "Transition Kick-off Workshop Completed" Implementation Milestone shown <b><u>in Exhibit 2.4.1 (Implementation Milestones)</u></b> .
"Knowledge Database" or "Knowledgebase" or "Knowledge Base"	Means a repository of information used in provision of the Services; inclusive of the Known Error Database.
"Known Error"	Means a Problem where the root cause is known and a temporary Workaround or permanent alternative has been identified.
"Known Error Database"	Means a repository for all data on the CIs, symptoms, and resolution or circumvention actions relating to all known errors.

Term	Definition
"KTS"	Key Telephone System.
"LAN"	Local Area Network.
"LAN" ("Local Area Network")	Means a local, high-speed Network, consisting of LAN Equipment, Software, Transport Systems, Interconnect Devices, Wiring, and Cabling are used to create, connect, and transmit data, voice, and video signals to, within or among VITA's and Customer's local-area network segments. LANs are typically confined within limited geographic areas (such as a single building or group of buildings) and offer relatively high data rates, usually above 10 /100 Mbps. LANs typically interconnect End-User PCs, local servers, and printers and may connect with WANs.
"LAN Equipment"	Means the Equipment and associated attachments, features, accessories, peripherals and Cabling supported or used by Supplier in connection with its provision of LAN Services to the Users, (e.g., bridges, intelligent and non-intelligent hubs, switches, gateways, remote access devices, intrabuilding wiring, and associated diagnostic equipment), and all additions, modifications, substitutions, upgrades, or enhancements to such Equipment.
"LAN Segment"	Means any portion (subset) of the LAN defined by either physical (e.g., ports 1 – x, 23rd floor, etc.) or logical (e.g., addresses aaa.bbb.ccc.001 – aaa.bbb.ccc.255) parameters that separate it from the remainder of the LAN.
"LAN Systems"	Means all LAN Equipment and associated Software supported or used by Supplier in connection with its provision of LAN Services.
"Law(s)"	Means: (i) any law, statute, regulation, ordinance or subordinate legislation; (ii) applicable common law; (iii) any binding court order, judgement or decree (including consent agreements); (iv) any order, directive, instruction, corrective action plan, directive, mandate, policy or rule that is binding on a Party or any of its Affiliates and that is made or given by any government, an agency thereof, or any regulatory body, of any national, federal, commonwealth, state, or local jurisdiction.
"Layer 1"	Means the physical layer of Open Systems Interconnect Basic Reference Model.
"Layer 2"	Means the data Link layer of Open Systems Interconnect Basic Reference Model.
"Layer 3"	Means the Network layer of Open Systems Interconnect Basic Reference Model.
"LDAP"	Lightweight Directory Access Protocol.
"LDRPS"	Living Disaster Recovery Planning System.
"LEC"	Local Exchange Carriers.
"LEE"	Law Enforcement Environment.
'Level 1 Support"	Means support that is provided as the entry point for inquiries or problem reports from Users. If Level 1 personnel cannot resolve the inquiry or problem, the inquiry or problem is directed to the appropriate Level 2 personnel or Third Party for resolution.
"Level 2 Support"	Means support that serves as a consolidation point for inquiries and problems between Level 1 and Level 3. For example, Level 2 support might exist in a computer operations or a distribution/mail out center. If Level 2 personnel cannot resolve the inquiry or problem, the inquiry or problem is directed to the appropriate Level 3 personnel or Third Party for resolution.

Term	Definition
"Level 3 Support"	Means support provided by the personnel or Third Party that is most knowledgeable about the underlying problem or question and that is utilized when efforts to resolve the problem or question by Level 1 and Level 2 Support have failed or are bypassed. Inquiries or problems are usually reported by Level 1 or Level 2 support personnel, but may be initiated directly by Users or the Supplier.
"Lobbying Act"	Has the meaning provided in <b>Section 15.9 (Compliance with the Federal Lobbying Act)</b> of the Agreement.
"LOC"	Lines of Code.
"Logical DBA"	Means a VITA or Customer database administrator who is responsible for the logical aspects of a database (including schema design, data modeling, application tuning, and application performance assistance). Logical DBAs have extensive knowledge of the business applications and requirements.
"Logical Security"	Means controlling access to information, software, and data by utilizing Operating Software parameters and applications level security controls. Logical Security includes logical separation of processors and disk and segregation of reusable storage media.
"Losses"	Means all losses, liabilities, damages, liens, claims, demands, costs, proceedings, suits, actions, assessments, expenses, and other charges suffered or incurred, including attorneys' and accountants' fees and disbursements, costs of investigation, litigation, settlement, and judgment, and any taxes, interest, penalties, and fines (whether criminal or civil), judgments and settlements with respect to any of the foregoing.
"MAC(s)"	Move, Add or Change (see "IMAC").
"Main Processes"	Means the processes listed in <b>Section 1.2 of Exhibit 2.1 (MSI Description of Services)</b> for the MSI and <b>Exhibit 2.2 (Description of Services – Cross Functional)</b> for the Service Tower Suppliers.
"Mainframe"	Means a Server that utilizes the current Operating Software (e.g., zOS, OS/390, VM, VSE, OS2200).
"Maintenance Period"	See "Scheduled Downtime."
"Maintenance Release"	Means those Software fixes and updates provided by vendors of the Software as part of normal maintenance service for the Software, such as, for example, Software point releases.
"Major Incident"	The highest category of impact for an Incident. A Major Incident results in significant disruption to business operations. See "Severity 1."
"Major Release"	Means a new version of Software that includes changes to the architecture and/or adds new features and functionality in addition to the original functional characteristics of the preceding Software release. These releases are usually identified by full integer changes in the numbering, such as from "7.0" to "8.0," but may be identified by the industry as a major release without the accompanying integer change.
"Malicious Code"	Means (i) any code, program, or sub-program whose knowing or intended purpose is to damage or interfere with the operation of the computer system containing the code, program or sub-program, or to halt, disable or interfere with the operation of the Software, code, program, or sub-program, itself, or (ii) any device, method, or token that permits any person to circumvent the normal security of the Software or the system containing the code.
"MAN Equipment"	Means the Equipment and associated attachments, features, accessories, peripherals, and Cabling supported or used by Supplier in connection with its provision of MAN Services to the Users (e.g., routers, multiplexers,

Term	Definition
	switches, fiber and cable patch system, repeater, converters, fiber termination, and associated diagnostic equipment), and all additions, modifications, substitutions, upgrades, or enhancements to such Equipment.
"Managed Environment"	Has the meaning set forth in <b>Section 1.4 (Managed Environment)</b> of the Agreement.
"Materials"	Means, collectively, Software, literary works, other works of authorship, documented specifications, designs, analyses, processes, methodologies, concepts, inventions, know-how, programs, program listings, programming tools, documentation, reports, drawings, databases, spreadsheets, machine-readable text and files financial models and Work Product, whether tangible or intangible.
"Measurement Date"	Means the date in each month on which Resources Units are counted for purposes of determining billing. The Measurement Date is indicated in <b>Exhibit 4 (Pricing and Financial Provisions)</b> .
"Measurement Window" or "Measurement Period"	Means the time during, or frequency by, which a Service Level shall be measured.
"Message Transformation"	Means the conversion of data from one format to another. This conversion can be performed by a Middleware service component that can be added to the ESB to help make validation and format conversions easier (e.g., ASCII to EBCDIC.)
"Message Queuing" or "MQ"	Means an asynchronous communication method between Applications or Systems where information (i.e. a message) is placed in a queue by a sending system for delivery to a receiving system. Retrieving the message can happen at any time after the sender places the message in the queue. A reply to the sender is not required. This component also includes support for publishing and subscribe models.
"Middleware"	Means Software that facilitates interactions and integration between and among two or more separate Software programs, Systems, or platforms. Examples: Weblogic, Websphere, MQseries, Apache, BEA Tuxedo, IBM HTTP Server.
"Milestone Deliverable"	Significant deliverables which may include Critical Deliverables, Implementation Milestones, Deliverables under Service Requests and others. Acceptance of such deliverables may result in a credit if missed or a payment if Accepted, as expressly set forth in the Agreement.
"Minimum Service Level"	Means the minimum level of performance set forth in <b>Exhibit 3.1 (Service Level Matrix)</b> with respect to each Critical Service Level and Key Measurement.
"Minimum Service Level Default"	Means the Supplier's level of performance for a particular Critical Service Level fails to meet the applicable Minimum Service Level at any time.
"Minor Release"	Means a scheduled release containing small functionality updates and/or accumulated resolutions to defects or non-conformances made available since the immediately preceding release (whether Major Release or Minor Release). Minor Releases shall include "Maintenance Releases" which are supplemental to and made available between Major Releases and other Minor Releases, issued and provided under specific Supplier Service Level or maintenance obligations and contain only accumulated resolutions or mandated changes. These releases are usually identified by a change in the decimal numbering of a release, such as "7.12" to "7.13."
"MIPS"	Millions of Instructions per Second.
"MNS"	Managed Network Services.

Term	Definition
“Mobile Data Communications Equipment”	Means the Equipment and associated attachments, features, accessories, peripherals, and Cabling supported or used by Supplier in connection with its provision of Mobile Data Communications Services to the Users (e.g., wireless modems, wireless access points (WAPs), mobile data terminals, or other devices that may be mounted in vehicles either permanently or detachable for portability used to deliver Mobile Data Communication Network Services, and associated diagnostic equipment), and all additions, modifications, substitutions, upgrades, or enhancements to such Equipment.
“Mobile Data Communications Network”	Means the wireless portion of VITA’s or Customer(s)’s Network consisting of Mobile Data Communications Equipment, Software, Transport Systems, Interconnect Devices, Wiring, and Cabling used to create, connect, and transmit data to and from Mobile Data Communications Equipment via mobile IP network roaming services.
“MOM”	Microsoft Operations Manager.
“Monthly Business Days”	Means Business Days in a given month.
“Monthly Charges “	Means the total Charges invoiced by Supplier in any calendar month for Services (excluding Pass-Through Expenses, Out-of-Pocket Expenses and Service Taxes).
“Monthly Invoice”	The invoice for monthly Charges provided by Supplier to VITA.
“Monthly Productive Hours Worked”	Means with respect to any month and any Supplier Personnel the number of productive hours worked by such Supplier Personnel, excluding non-productive time (e.g., business travel, vacation, holidays, training, education, marketing, administrative staff meetings, medical leave, and military leave).
“MPLS”	Multi-Protocol Label Switching.
“MQSeries”	Message Queuing Services.
“MSDOS Legacy Server”	Means an Application Server with MSDOS operating systems.
“MSI” or “Multisourcing Service Integrator”	Means the Integrated Supplier who has entered into an agreement with VITA to serve as the Multisourcing Service Integrator as described in in <b>Section 1.4 (Managed Environment)</b> of the Agreement.
“MSM”	Mobile Short Messaging.
“MTTR”	Mean Time to Resolve.
“NARs”	Network Access Registers.
“NAT”	Network Address Translation.
“NCP”	Network Control Program.
“NetView”	A Tivoli product that enables centralized/distributed network management across multiple operating systems and protocols.
“Network”	Means collectively, VITA and Customer Transport Services, WAN, LAN, Managed Fiber Services, Standard Voice Network, Contact Center, Voice Switch, Voice Mail, Auto Attendant, and Conferencing Network.
“Network Time Protocol”	Means a protocol for synchronizing clocks on systems on the Network.
“Network Topology”	Means the arrangement in which the nodes or interfaces to the Network are connected.
“NFPR”	National Fire Protection Association.
“NIDS”	Network Intrusion Detection System.
“Nine-Month Measurement Window”	Has the meaning given in <b>Section 2.6.1 of Exhibit 3 (Reporting and Service Level Management)</b> .
“NIPS”	Network-Based Intrusion Prevention (an IPS or intrusion prevention systems designed for security over network-based systems).

Term	Definition
"NIST"	National Institute of Standards and Technology.
"NME"	Network Management Environment.
"No Cost Change"	Has the meaning provided in <b>Section 1.11.3 (Charges Related to Changes)</b> of the Agreement.
"Noncompliance"	Means each instance that the Software, Equipment, Systems, or other Deliverable or milestone fails to meet its Acceptance Criteria or is otherwise deficient in VITA's reasonable discretion (in accordance with the Service Management Manual or other criteria agreed by the Parties, to the extent applicable).
"Non-Conformities"	Means any errors, defects and other non-conformities.
"Normal Business Hours"	See "Business Hours."
"Normal Operations"	Means the performance level and execution of tasks by a device, software equipment, application, CI, or Service that is at a level that is the highest of: (i) the applicable OEM's specifications, (ii) software developer specifications, (iii) third party provider specifications, or (iv) VITA supplied specification.
"NOS"	Network Operating System.
"NSM"	NetScreen Security Manager.
"NTP"	Network Time Protocol.
"OCM"	Optional Change Management – A class of change included in the Supplier managed network Services.
"OEM"	Original Equipment Manufacturer.
"OGC"	Office of Government Commerce (U.K.)
"OI"	Organizational Inventory.
"OLA"	Operating Level Agreement.
"OLAP"	On-line Analytical Processing.
"OLTP"	On-line Transaction Processing.
"One-Time Charges"	Means any Charges that are non-recurring and are typically associated with start-up and implementation costs or other Project type Services.
"One-Time Deliverables"	Means those Deliverables that are non-recurring that have associated Deliverable Credits payable to VITA in the event Supplier fails to successfully and timely complete such Deliverables.
"On-Going Programs"	Means programs or periodic projects that, while not part of day-to-day operations, are critical to accomplish.
"Online System"	Means a computer system that is a part of, or is embedded in, a larger entity, such as a communications system, and that interacts in real or near-real time with the entity and its users.
"OPB"	Office of Planning and Budget.
"Open Source License"	Means any copy left or open source license, or other license for free code, community source code or similar software, including the following: (a) GNU's "General Public License" or Lesser/Library GPL; (b) the "Artistic License" (e.g., PERL); (c) the "Mozilla Public License"; (d) the "Netscape Public License"; (e) the "Berkeley Software Design" license including "FreeBSD" or "BSD-style license"; (f) the "Sun Community Source License"; (g) an "Open Source Foundation License" (e.g., CDE and Motif UNIX user interfaces); or (h) the "Apache Server License".
"Operating Level Agreement"	Means an agreement that covers the inter-relationship between two Integrated Suppliers in connection with their delivery of services to Customers, as described in <b>Section 1.4.4 (Operating Level Agreements)</b> .

Term	Definition
Operating Level Measures (OLMs)	Means the processes describing specific interdependency commitments, handoffs, and metrics between various suppliers, which may include the MSI, Service Tower Suppliers, and Customers.
“Operating Software” or “Systems Software” or “Operating System”	Means all software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials, and media related thereto) that perform tasks basic to the functioning of the Equipment and are required to operate the Applications Software or otherwise support the provision of Services by Supplier.
“Operations Document”	Means instructions, comments, and information that provide guidelines or instructions for performing work related to Services.
“Organizational Conflict of Interest”	Means that because of other activities or relationships with other Persons, (i) a Person is unable to render impartial assistance or advice to VITA or any Customer, or (ii) the Person’s objectivity in performing the Services is or might be otherwise impaired.
“OS”	Operating system.
“OSA”	Open Systems Adapter.
“OSHA”	Occupational Safety and Health Agencies.
“OT”	Overtime.
“OTIS”	Offender Tracking Information System.
“Outage”	Means a condition such that a System, Service, Application System, Equipment or network component is not Available or is substantially not Available and is impacting normal business operations.
“Party” and “Parties”	Means individually and collectively Supplier and VITA.
“Pass-Through Expense(s)”	Means the Supplier expenses which VITA has agreed to pay directly or reimburse to Supplier in accordance with <b>Exhibit 4 (Pricing and Financial Provisions)</b> .
“Patch (es)”	Piece of Software designed to update other Software, firmware, Operating System, or its supporting data to fix or improve it.
“PAYE”	Pay As You Earn.
“PBE”	Private Branch Exchanges.
“PBGC”	Pension Benefit Guaranty Corporation.
“PBX”	Private Branch Exchange.
“PC(s)”	Personal Computer(s).
“PCI”	Payment Card Industry.
“PDA(s)”	Personal Digital Assistant(s).
“Performance Category”	Means a grouping of Critical Service Levels designated as such as set forth in <b>Exhibit 3.1 (Service Levels Matrix)</b> .
“Performance Credit(s)”	Means an amount of credits payable to VITA in accordance with <b>Exhibit 3 (Reporting and Service Level Management)</b> as a result of a Service Level Default or a Minimum Service Level Default.
“Person(s)”	Means an individual, corporation, limited liability company, partnership, trust, association, joint venture, unincorporated organization or Entity of any kind or nature, or a Governmental Authority.
“Personal Data”	Means that portion of VITA Data that is subject to any Privacy Laws.
“Personal Medical Data”	Means Personal Data that contains health care or medical information.
“Personal Information”	Means all information that describes, locates or indexes anything about an individual including his real or personal property holdings derived from tax returns, and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, or that affords a basis for inferring personal characteristics, such as finger

Term	Definition
	and voice prints, photographs, or things done by or to such individual; and the record of his presence, registration, or membership in an organization or activity, or admission to an institution. "Personal information" shall not include routine information maintained for the purpose of internal office administration whose use could not be such as to affect adversely any data subject nor does the term include real estate assessment information( <u>Code of Virginia § 2.2-3801</u> ).
"Personnel Projection Matrix"	Has the meaning provided in <b>Exhibit 5 (Personnel and Human Resources Provisions)</b> .
"PESQ"	Perceptual Evaluation of Speech Quality.
"PGR"	Procurement Governance Request.
"PHI"	Protected Health Information.
"Physical DBA"	Means the Supplier database administrator responsible for the environmental aspects of a database including but not limited to the following activities: <ul style="list-style-type: none"> <li>• Supporting the design and implementation of multiple production, test and development database subsystems; exclusive of table creation for</li> <li>• Development and Initial Test Environments.</li> <li>• Capacity planning for database instances and reorganizing as necessary.</li> <li>• Performing stress testing and database performance tuning.</li> <li>• Installing, maintaining, and monitoring the DBMS Software and products, including technical advice and support to the Applications Development, and Maintenance staffs and Logical DBAs as may be required.</li> </ul>
"Physical Server"	Means an individual physical Server Device containing processors, memory, network interface cards, and disk drives.
"PIA"	PeopleSoft Internet Architecture.
"PII"	Personally Identifiable Information.
"PIP"	Performance Improvement Plan.
"PIR"	Post Implementation Review.
"PIR"	Post Implementation Review or Project Initiation Review (as appropriate)
"Plan"	Has the meaning provided in <b>Section 14.7 (Reporting and Fees from Supplier)</b> of the Agreement.
"Planned Projects"	Means any Projects that are not yet started as of the RFP issuance date, but are planned to begin prior to the Commencement Date.
"Platform Relationship Office" or "PRO"	VITA team dedicated to managing the relationship between Customers and suppliers within the ITISP.
"PM"	Depending on context, means Preventive Maintenance, Problem Management, or Project Manager.
"Point-of-Presence"	(POP) is a Location at which Supplier maintains a Terminal Location for purposes of providing Service.
"Policy and Procedures Manual"	Means the policy and procedures manual described in <b>Section 1.4.2 (Policy and Procedures Manual)</b> . In Accordance with <b>Section 1.4.2 (e) (Transition to Service Management Manual)</b> , until such time as the Service Management Manual shall have superseded by the Policy and Procedures Manual, unless otherwise expressly provided or the context shall otherwise require, references in the Agreement to the Service Management Manual shall be deemed references to the Policy and Procedures Manual.

Term	Definition
"Pool Percentages Available for Allocation"	Means a percent of the At-Risk Amount as indicated in <b>Exhibit 3.1 (Service Levels Matrix)</b> .
"POR"	Protective Order Registry.
"Port"	An entrance to and/or exit from a network.
"Portable Network Devices"	Means portable, hand-held Equipment used by Users for telecommunications access and services, including pagers, mobile phones, calling cards, and any telecommunications functionality associated with PDAs. Portable Network Devices do not include personal computers or laptops.
"Portal"	Means a type of content management web site, password protected to allow secured access to and input of content as required in <b>Exhibit 2 (Description of Services and Solution)</b> .
"POS"	Point of Service.
"Post Implementation Review" or "Post Project Review"	Means an assessment of business benefits delivered once the Project has been put into use.
"PQMS"	Process and Quality Management System.
"Pre-Production" or "Pre-Production Environment"	Means the system environment that closely simulates Production; it has minimal changes and is used for testing applications, software, and databases just prior to migration to Production. Customers must have at least one Pre-Production Environment.
"Print Document Files"	Means files containing print control characters, language and text used to tell the printer how and what to print on a page.
"PRISM"	Project to Realize Integrated Systems for Management.
"Privacy Laws"	Means Laws relating to data privacy or data protection.
"Problem"	Means the unknown underlying cause of one or more Incidents.
"Problem Management"	Means the process of tracking and managing all problems arising in VITA and/or Customer's IT environment, and resolving those problems arising from or related to the Services.
"Problem Manager"	Means the individual who has responsibility for all Problem Management activities within an organization.
"Production or Production Environment"	Means the system environment in which an organization's data processing is accomplished. This environment contains Customer's business data and has the highest level of security and availability of all environments (includes training and other Production like environments).
"Project"	Means a discrete unit of non-recurring work (i.e., not performed on a continuous or recurring basis).
"Project Deliverable"	Means any Deliverables in connection with a Project.
"Project Plans"	Means a written plan describing the contents, cost, and timing of a Project, to be delivered in accordance with the requirements of VITA or other Customer.
"Protected Health Information"	Means individually identifiable health information that is (i) transmitted in electronic media, (ii) maintained in electronic media, or (iii) transmitted or maintained in any other form or medium. Protected health information excludes individually identifiable health information in (a) education records covered by the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g); (b) records of any student who is 18 years of age or older, or is attending a postsecondary school, that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and that are made, maintained, or used only in connection with the provision of treatment to the student and are not

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	available to anyone other than persons providing such treatment, except that such records may be personally reviewed by a physician or other appropriate professional of the student's choice; and (c) employment records held, in its role as employer, by a health plan, health care clearinghouse, or health care provider that transmits health information in electronic form. (§ 37.2-1032, <u>Code of Virginia</u> ).
"Provider Edge"	The edge of, or point in which Customer traffic enters or exits, the Supplier Private IP Network.
"PSTN"	Public Switched Telephone Network.
"PTT"	Push To Talk.
"Public Bodies"	Means all public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 and §2.2-2012 of the <u>Code of Virginia</u> . The term Public Bodies shall include private institutions of higher education that are listed at: <a href="http://www.cicv.org/Our-Colleges/Profiles.aspx">http://www.cicv.org/Our-Colleges/Profiles.aspx</a> .
"QoS"	Quality of Service.
"Quality Assurance" ("QA")	Means the actions, planned and performed, to provide confidence that all processes, Systems, Equipment, Software, and components that influence the quality of the Services are working as expected individually and collectively.
"R&D"	Research and Development.
"RA"	Risk Analysis.
"RABS"	Resource Accounting and Billing System.
"RAC"	Real Application Clusters.
"RAM"	Random Access Memory.
"RCA"	Root Cause Analysis.
"RCDD"	Registered Communications Distribution Designer (a trademarked designation awarded to information transport systems professionals by BICSI, an industry association).
"Receipt"	Means VITA or other Customer or its Agent has physically received or has unfettered access to any Deliverable, including, as applicable, at the correct "ship-to" location.
"RCM"	Resource Capacity Management.
"Recovery Point Objective" ("RPO")	Means the recovery point objectives, expressed as the acceptable amount of data loss measured in time prior to an event that has been declared as a disaster.
"Recovery Time Objective" ("RTO")	Means the recovery time objectives, expressed as the duration of time within which an Application, including all technology components included in the applicable disaster recovery / business continuity plan must be recovered, restored and operational starting from the time of declaration of a disaster.
"Recurring Deliverables"	Means those Deliverables to be provided on a scheduled and recurring basis that have associated Deliverable Credits payable to VITA in the event Supplier fails to successfully and timely complete such Deliverables.
"Reduced Resource Credit" ("RRC")	Means the incremental credits set forth in <b>Exhibit 4 (Pricing and Financial Provisions)</b> for the use of Services below the monthly Resource Baselines for such Services.
"Redundancy"	An offering of alternate Service through the use of one or more different routings, circuits, and/or additional equipment.
"Refresh"	Means the upgrading and/or replacing of Equipment and Software during the Term.

Term	Definition
"Regulatory Requirements"	Means together, the VITA Regulatory Requirements and the Supplier Regulatory Requirements.
"Release"	Means a collection of new and/or changed CIs, which are tested and introduced into the live Environment together.
"Release Management"	Means the managing of the procedures to ensure secure, managed rollouts of new hardware, new versions of software, and/or new documentation, created in-house or by a Third Party.
"Repair"	Means the replacement or correction of a failed Device or Software.
"Reports"	Means reports that Supplier will provide to VITA that detail compliance with the Agreement or otherwise required under the Agreement.
"Request for Change" or ("RFC")	Means a formal, written, request to change Configuration Items within and organization, in accordance with applicable VITA Rules, including COV ITRM PSGs.
"Request Management"	Means the process of tracking and managing all requests from Users arising in Customer's IT environment, and resolving those requests arising from or related to the Services.
"Required Consent(s)"	Means such consents as may be required for (i) the assignment to a Party, or the grant to a Party of rights of access and use, of resources otherwise provided to or licensed by the other Party, and (ii) with respect to any resource (e.g., software, equipment, services) for which the corresponding contract is to be assigned to VITA or VITA's designee (including a third party) pursuant to Termination Assistance (including any resource existing as of the Effective Date and assigned to the Supplier, as well as any resource utilized or introduced after the Effective Date during the Term), the disclosure of the corresponding contract terms to VITA or the third party designee, or the assignment of such contract to VITA or the third party designee, as part of Termination Assistance.
"Resolution Time"	Means the actual time interval between the Start Time for an Incident and the time such Incident is Resolved.
"Resolve" or "Resolution"	Means the restoration of full service or the completion of the service request in a manner acceptable to VITA (or the applicable Customer) in its reasonable discretion. Resolution may include the restoration of full service and functionality by workaround or other alternative means, followed in due course by actual correction.
"Resource Baseline(s)"	Means the number of Resource Units set forth in <b>Exhibit 4 (Pricing and Financial Provisions)</b> for a Resource Unit that are included in the Base Charge.
"Resource Unit Category"	Means a category of Resource Units which are measured and with respect to which charging rates or other charging mechanisms apply.
"Resource Unit" or "RU"	Means a measurable device, unit of consumption, or other unit or resource utilization associated with the Services, as described in <b>Exhibit 4 (Pricing and Financial Provisions)</b> , that is used for purposes of calculating Charges, including calculating ARCs and RRCs as described in <b>Exhibit 4 (Pricing and Financial Provisions)</b> .
"Response Time"	Means the number of elapsed minutes between the time a Contact is received and the time Supplier responds to the User or designated VITA contact to acknowledge and verify the problem.
"RF"	Radio Frequency.
"RFC"	Request for Change/Comment.
"RFO"	Request for Offer.
"RIF"	Reductions In Force.

Term	Definition
"RMAN"	Recovery Manager.
"RMON"	Remote Monitoring.
"ROI"	Return on Investment.
"ROM"	Rough Order of Magnitude Quote.
"Root Cause Analysis" ("RCA")	Means the formal process, specified in the Service Management Manual, to be used by Supplier to diagnose the underlying cause of problems at the lowest reasonable level so that effective corrective action can be taken.
"RPO"	Recovery Point Objectives.
"RRC"	Reduce Resource Credits.
"RRS"	Retrieval and Reporting System.
"RSO"	Retained Service Organization.
"RSR"	Recruiting, Staffing and Resourcing.
"RTO"	Recovery Time Objectives.
"RU"	Resource Units.
"RUP"	Rational Unified Process.
"SAN"	Storage Area Network.
"Satellite"	Means a Transport service using radio waves between ground-based stations and satellites orbiting the Earth.
"Scheduled Downtime"	Means a period in which a subject Service component is not required to be Available due to scheduled time required to perform system maintenance (for example, preventive maintenance, system upgrades, etc.), provided that such period has been mutually agreed between the Parties and is scheduled so as to minimize the impact to the Customers' business. The Supplier shall maintain Availability during such periods to the extent reasonably practicable.
"Scheduled Operations"	Means the period specified in the Service Management Manual during which Supplier is obligated to provide problem resolution with respect to particular Services or Service components in accordance with the applicable Severity Level.
"Scheduled Uptime"	Means that period of time (days of the week and hours per day) during which a particular System, Application, Software, Hardware, Network, or any other part of the Services is expected to be available during the Measurement Window.
"SCM"	Service Capacity Management.
"SDC"	Service Delivery Committee.
"SDLC"	Software Development Lifecycle.
"SDLLC"	Synchronous Data Link Control over Logical Link Control.
"SDM"	Service Delivery Management.
"Secure Document Storage"	Means a physical storage location with security controls which limits check in, check out of document forms to authorized personnel.
"Security"	Means ensuring that services are used in an appropriate way by the appropriate people.
"Security Design Review"	Means an evaluation of network architecture, including its physical and logical topology, from a security perspective.
"Security Incident"	Means (i) any circumstance pursuant to which applicable Law requires notification to be given to affected parties or other activity in response to a security-related incident; and (ii) any actual, attempted, suspected, threatened, or reasonably foreseeable circumstance or incident that

Term	Definition
	compromises, or could reasonably be expected to compromise, the security of any VITA Data or VITA Software or Systems.
"Security Management"	Means the process of managing a defined level of security on information and services. This includes managing confidentiality, integrity, and availability of data.
"Security Manager" or "VITA Security Manager"	Means the role that is responsible for the Security Management process in the Supplier organization.
"Security Officer"	Means the person is responsible for assessing the business risks and setting the security policy. As such, this role is the counterpart of the Security Manager and resides in the Customer's business organization. The Security Officer and the Security Manager work closely together.
"Security Plan"	Means a plan provided by the Supplier to support Security Management, in accordance with the Service Management Manual and <b>Exhibit 2 (Description of Services and Solution)</b> .
"Security Program"	Has the meaning provided in <b>Exhibit 2 (Description of Services and Solution)</b> .
"SEI"	Software Engineering Institute.
"SEI CMM"	Software Engineering Institute Capability Maturity Model.
"Sensitive" or "Sensitive Data"	Means, with respect to data, any data of which the compromise with respect to confidentiality, integrity, and/or availability could adversely affect COV interests, the conduct of agency programs, or the privacy to which individuals are entitled.
"Server"	Means any computer that provides shared processing or resources (e.g., Application processing, database, mail, proxy, firewalls, backup capabilities, print, and fax services) to Users or other computers over the Network. A Server includes associated peripherals (e.g., local storage devices, attachments to centralized storage, monitor, keyboard, pointing device, tape drives, and external disk arrays) and is identified by a unique manufacturer's serial number.
"Service Capacity Management" ("SCM")	Means the management that manages the performance of the services provided to the Customers, including measurement of SLA results obtained. Part of Capacity Management.
"Service Catalog"	Means a list of IT products and services, as described in <b>Exhibit 2 (Description of Services and Solution)</b> .
"Service Delivery Processes"	Means the core set of ITIL Service Management Processes that have a tactical or strategic focus. They include Service Level Management, Critical Deliverable Management, Capacity Management, IT Service Continuity Management, Availability Management and Financial Management for IT Services.
"Service Desk"	Means the facilities, associated technologies, and fully trained staff who respond to Calls or Contacts, coordinate all Problem Management and Request Management activities, and act as a single point of contact for Users in regard to the Services.
"Service Evolutions"	See "Evolution of Services."
"Service Integrator"	See "MSI."
"Service Level Credit Allocation Percentage"	Means the percentage of the Allocation of Pool Percentage allocated to a Critical Service Level within a Performance Category.
"Service Level Credits"	Means amounts that are creditable based on certain failures to achieve Service Levels, as further described in <b>Exhibit 3 (Reporting and Service Level Management)</b> .

Term	Definition
"Service Level Default"	Means an Expected Service Level Default or Minimum Service Level Default.
"Service Level Invoice Amount"	Means Charges due and owing for a particular month, including the Monthly Base Charge and any additional Charges, including, to the extent applicable, Adjustments applicable to the Services for such month, and any other amounts payable by VITA to Supplier pursuant to the Agreement for performance or events occurring in such month.
"Service Levels"	Has the meaning provided in <b>Section 3.1 (Service Levels and Other Performance Standards)</b> of the Agreement, and comprise Critical Service Levels and Key Measurements.
"Service Management"	Means a set of specialized organizational capabilities for providing value to customers in the form of services
"Service Management Lifecycle"	Means the five key phases organizing the processes for managing IT services: Service Strategy, Service Design, Service Transition, Service Operation, Continual Service Improvement
"Service Management Manual"	Means the management procedures manual for the Services described in <b>Section 1.4.3 (Service Management Manual)</b> of the Agreement.
"Service Request"	Means an order or request for information or assistance. Service Requests are typically Standard Services requests or IMACs that may be ordered or initiated via the Service Catalog or Service Desk.
"Service Taxes"	Means all sales, service, value-added, use, excise and other taxes assessed by tax authorities against either Party or any Customer on the provision of the Services as a whole, or on any particular Service.
"Service Tower"	Means a single service area (which may include multiple sub-components), each of which is managed and coordinated by the MSI role. Each Service Tower is addressed in a corresponding Description of Services (e.g., MSI is a Service Tower described in the MSI Description of Services).
"Service Tower Supplier" or "STS"	Means a provider of a Service Tower. One Integrated Supplier may provide more than one Service Tower, each under the applicable Description of Services.
"Services"	Has the meaning provided in <b>Section 1.1 (Scope of Services)</b> of the Agreement.
"Severity Level"	Means the categorization of an Incident associated with the Services based on the potential impact of the problem to Client and any Customer, as further defined in <b>Exhibit 3 (Reporting and Service Level Management)</b> .
"Severity Level 1"	Has the meaning given in <b>Exhibit 3 (Reporting and Service Level Management)</b> .
"Severity Level 2"	Has the meaning given in <b>Exhibit 3 (Reporting and Service Level Management)</b> .
"Severity Level 3"	Has the meaning given in <b>Exhibit 3 (Reporting and Service Level Management)</b> .
"Severity Level 4"	Has the meaning given in <b>Exhibit 3 (Reporting and Service Level Management)</b> .
"Significant Service"	Means any significant or important Function for which the Supplier is responsible in accordance with the requirements of this Agreement, including any Function which, if not performed correctly, and in accordance with this Agreement, would have a significant impact on the ability of VITA or another Customer to conduct an important aspect of its operations or responsibilities.
"SIR"	Secure Intranet Ring

Term	Definition
"Site List"	The document listing the Sites, which may be located in the Service Management Manual may change and be updated during the Term.
"Site(s)"	Means VITA Sites and Supplier Facilities.
"SJSAS"	Sun Java System Application Server.
"SMF"	Systems Management Facility.
"SMM"	Service Management Manual.
"SMS"	Microsoft Systems Management Server.
"SNA"	Systems Network Architecture.
"SNMP"	Simple Network Management Protocol.
"SOA"	Start of Authority.
"Soft IMAC"	Means an approved Software IMAC request received from VITA, which IMAC can be performed concurrently with remote element management tools and does not require any physical on-site intervention. A Software patch or error correction upgrade will not be considered as a Soft IMAC.
"Software"	Means any programs and code consisting of instructions or statements in a form readable by individuals (source code) or machines (object code), and related Documentation and supporting Materials therefore, in any form or medium, including electronic media used by Supplier in the performance of the Services or provided or to be provided by Supplier as a component(s) of any Deliverable or Component, and any subsequent modification of such programs and code, excluding Work Product owned by VITA or, as applicable, the Commonwealth.
"Software Service Charge" ("SSC")	Means the charging unit to recover costs for Software. If applicable, further definition is given in <b>Exhibit 4 (Pricing and Financial Provisions)</b> .
"Solution Request" or "Request for Solution"	Means a request for Solution Services.
"Solution Services"	Means the 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 <b>Exhibit 2.1(Description of Services)</b> of the Agreement.
"SOR"	Sex Offender Registry.
"Source Code"	Means (a) the underlying programming code, including without limitation, all queries, data structures, instructions, routines or objects that exists in the form of programming statements and instructions in connection therewith, that is generally written by, and is readable by, a trained human software developer, but that is not generally directly executable by a computer without first being translated for operation on computer equipment through assembly or compiling, and accompanied by Documentation, in sufficient detail to enable a trained Software developer through study or such Documentation to maintain and/or modify such software without undue experimentation, and (b) all interfaces, compilers and other tools necessary to enable VITA to access, use and operate the software code. The Source Code and object code will be in a format and on a storage medium suitable for loading into the applicable System, and will not be encrypted (except to the extent VITA or Customer requests otherwise).
"SPD"	Summary Plan Description.
"Specifications"	Means, with respect to processes, Software, Equipment, Systems or other contract Deliverables to be designed, developed, delivered, integrated, installed, and/or tested by Supplier, the technical, design and/or functional specifications set forth in Third Party Vendor documentation, in

Term	Definition
	an Additional Services or Project description requested and/or approved by VITA or otherwise agreed upon in writing by the Parties.
"SPOC"	Single Point of Contact.
"SRCs"	System Change Requests.
"SRU"	Staffing Redeployment Unit.
"SSA"	Social Security Administration.
"SSC"	Software Service Charge.
"SSL"	Secure Sockets Layer.
"SSN"	Social Security Number.
"Standard Change"	Means an accepted solution to an identifiable and relatively common set of requirements, where authority is given in advance of implementation, such as setting up an access profile for a new employee.
"Standard Products"	Means minimum EUC Equipment and Software requirements and/or specific EUC Equipment and Software that are designated as being in standard use within VITA or Customer.
"Standard Service(s)"	Means defined and discrete units of Services, which have been approved for common use by Customers via the Service Portfolio Management review process. Typically, such Standard Services are orderable by Users through the Service Catalog.
"Standard Software"	Means the list of software (regardless of ownership or license holder) that is authorized for installation on systems in the Managed Environment. VITA will have lists of environment-wide standard software. Customers will have lists of additional software that is authorized for their organization.
"Standard Voice Network"	Means the portion of the Network consisting of Standard Voice Premise Systems, Software, Transport Systems, Interconnect Devices, Wiring and Cabling used to create, connect, and transmit voice to Users.
"Standard Voice Premise Equipment"	Means the Equipment and associated attachments, features, accessories, peripherals, and Cabling, including dedicated servers supported or used by Supplier in connection with its provision of Standard Voice Services to the Users, including PBXs and PBX rectifiers, VoIP PBX, Hybrids, or hosted PBX, Centrex , handsets, key systems, small office/home communications systems, voice mail systems, and paging systems, American Disabilities Act (ADA) communications devices (e.g., TDDs, teletype, special equipped handsets), voice recognition units ("VRUs"), interactive voice response units ("IVRs"), call data recording systems ("CDRs"), automatic call distributors ("ACDs"), voice communications management systems, backup battery systems, and associated diagnostic equipment.
"Standard Voice Premise Systems"	Means all Standard Voice Premise Equipment and associated Software supported or used by Supplier in connection with its provision of Standard Voice Services.
"Standard Voice Services"	Means the Standard Voice Network technical requirements and proposed improvements to the Standard Voice Network technical environment as set forth by VITA.
"Start Time"	Means, with respect to an Incident, Call or Contact, the time when the Incident ticket is created. With respect to an Outage, the earlier of the time when the Incident is detected or should have been detected (by the applicable monitoring for the System). If more than one ticket is created for the same root cause, the Start Time shall be based on the earliest of the ticket creation times.

Term	Definition
"Strategic Plan"	Means the plans that may be periodically developed by VITA that set forth the plans for executive branch agencies or the Commonwealth's key operational objectives and requirements and outline its strategies for achieving such objectives and requirements. VITA may revise the Strategic Plan from time to time. The Strategic Plan is likely to include both annual and multi-year strategies, objectives, and requirements.
"Statement of Work"	Has the meaning provided in <b>Section 1.3.1 (Solution Services)</b> of the Agreement.
"Storage"	A Device or service used to store digital information.
"Stratum 0"	Means the Strata of Network Time Protocol, describing clocks such as atomic clocks which provide time.
"Stratum 1"	Means the Strata of Network Time Protocol, describing devices connected to Stratum 0 devices.
"Stratum 2"	Means the Strata of Network Time Protocol, describing devices sending time requests to Stratum 1 devices.
"Subcontractor(s)"	Means any entity to which Supplier (or other Subcontractor of any tier) has subcontracted for performance of, or delegated any of its responsibilities under the Agreement, including an Affiliate of the Supplier.
"Sub-Service"	Means a portion of the Services that is either (a) identified as such in the Agreement or (b) otherwise would be severable from the rest of the Services.
"SUCCESS"	System for Uniform Calculation and Consolidation of Economic Support Services.
"Successor Supplier"	Means an Entity that performs or is expected to perform a function or functions that replace any portion of Terminating Services following their termination or expiration.
"Supplier"	Has the meaning set forth in the introductory paragraph of the Agreement.
"Supplier Assets"	Means assets owned, leased or licensed by Supplier and used to deliver the Services.
"Supplier Facilities"	Means the locations, other than VITA Facilities, from which any portion of the Services may be performed.
"Supplier Materials"	Means any materials (including documents, drawings, designs, computer code, or other tangible form or medium in which a work of authorship or expression is fixed; or any invention, business method, or process materials) and Intellectual Property that were acquired, licensed or developed by the Supplier or any of its Affiliates either (a) prior to the commencement of the Supplier's work on behalf of VITA or Customer under the Agreement; or (b) independent of the Agreement (e.g., created by personnel other than those involved in performance of the Agreement).
"Supplier Personnel"	Means each director, officer, manager, employee, contractor, subcontractor, representative and agent of Supplier, Subcontractors or any affiliate who perform any Services.
"Support"	Means the Supplier performing continuous oversight to ensure that a Device, Software, or process performs its designated function, including assuming responsibility for performing all necessary Repairs, preventive maintenance, patching, Upgrades, and performance tuning as required to ensure that the Device, Software, or process operates in accordance with Normal Operations.
"SUS"	Microsoft Software Update Services.

Term	Definition
SWESC	Southwest Enterprise Solutions Center.
"SYSGEN(s)"	System Generation.
"System(s)"	Means hardware, software, networks, applications and other equipment that comprise a technical environment.
"Systems Overhead"	Means Resource Units used by the Supplier to measure and calculate Customers' resource usage, to perform Supplier billing functions, used for capacity planning studies or attributable to reruns that are due to the fault of Supplier, and such other Supplier usage.
"T&A"	Time and Attendance.
"T&E"	Travel and Entertainment Expenses.
"TCC"	Total Cash Compensation.
"TCO"	Total Cost of Ownership.
"TCP"	Transmission Control Protocol.
"TDD"	Telecommunications Device for the Deaf.
"TDMA"	Time Division Multiple Access.
"Technical Recovery Guide"	Means a compilation of technical information, procedures, environmental configurations, operations and dependencies required to document each environment to ensure technical recovery of hardware, Operating System, storage, Network and other Equipment. Technical Recovery Guides capture operational elements, dependencies and instructions which must be re-enabled and sequenced appropriately to restore business operations.
"Technology Plan"	Has the meaning set forth in <b>Exhibit 2 (Description of Services and Solution)</b> .
"Telecommunications Device for the Deaf"	Means electronic device for text communication via telephone line, typically used by persons with hearing impairment.
"Teleworker"	Means the employee or contractor who is not working from a Site; may be located at home or another remote office.
"Teleworker Agent"	Means the Contact Center agent who is not located at a Site or a Contact Center; may be located at a home or another remote office.
"Term"	Has the meaning set forth in <b>Section 6.1 (Term)</b> of the Agreement.
"Third Party"	Means, whether or not capitalized, an Entity or individual that is neither a Party to the Agreement nor an Affiliate of a Party.
"Third Party Contract(s)"	Means all agreements between third parties and VITA or between third parties and any Customer that have been or shall be used in connection with the Services.
"Third Party IP"	Means all Intellectual Property Rights owned by a party other than VITA or the Customer or the Supplier, as applicable.
"Third Party Software"	Means either VITA's or Customers' Third Party Software or Supplier Third Party Software.
"Third Party Vendor(s)"	Means a Third Party that provides products or services to any Party that is related to, or is in support of, the Services (e.g. hardware vendors, premier support contracts, etc.). Third Party Vendors do not include Subcontractors.
"TIA"	Telecommunications Industry Association.
"Tier"	Means a layer of application functionality in a partitioned application that can usually be deployed on separate physical computers for better scalability and data security.
"Trade Secrets"	Has the meaning provided under applicable law.

Term	Definition
"Transition Out Assistance"	Has the meaning provided in <b>Section 13.1 (Transition Out Assistance; General)</b> of the Agreement.
"Transition Out Assistance Period"	Means any period of time during which the Supplier is providing (or is required to provide) Transition Out Assistance.
"Transition Out Plan"	Has the meaning provided in <b>Section 13.2 (Transition Out Plan)</b> of the Agreement and <b>Exhibit 2.6 (Transition Out Plan)</b> .
"TRG"	Technical Recovery Guide.
"TSD"	Technology Solution Design.
"TSO"	Time Sharing Option.
"Two-Way Radio Equipment"	Means the Equipment and associated attachments, features, accessories, peripherals, and Cabling supported or used by Supplier in connection with its provision of Two-Way Radio Services to the Users (e.g., portable radios, mobile radios, fixed mobile devices and fixed base locations, and associated diagnostic equipment), and all additions, modifications, substitutions, upgrades, or enhancements to such Equipment.
"TWR"	Two-Way Radio.
"Type R Service Levels"	Type R Service Levels are related measures shared between the MSI and the Service Tower Supplier(s) as defined in <b>Exhibit 3 (Reporting and Service Level Management)</b> .
"Type S Service Levels"	Type S Service Levels are shared between the MSI and an individual Service Tower Supplier as defined in <b>Exhibit 3 (Reporting and Service Level Management)</b> .
"Type U Service Levels"	Type U Service Levels are intended to measure Services that are specific to one Integrated Supplier's performance, and therefore are not shared between Integrated Suppliers as defined in <b>Exhibit 3 (Reporting and Service Level Management)</b> .
"U.S. Bankruptcy Code" or "Bankruptcy Code"	Means Title 11 of the United States Code.
"UAB"	Unified Address Book.
"UCCaaS SLED"	Unified Communications and Collaboration as a Service for State, Local, and Education. The Supplier's unified communications product suite variant designed for the public sector space including support for voice services as well as a full suite of collaboration tools. UCCaaS SLED is delivered from Fedramp certified data centers and provides encryption and a wide range of security standards compliance.
"UCITA"	Uniform Computer Information Transactions Act.
"UM"	Unified Messaging.
"Unrelieved Deliverable Credits"	Means all Deliverable Credits that are not eliminated via Earnback.
"Update"	Means any update, modification or new release of the Software, System Software, Application, Documentation or Supplier Product that Supplier makes generally available to its customers. Software Updates include patches, fixes, upgrades, enhancements, improvements, or access mode, including without limitation additional capabilities to or otherwise improve the functionality, increase the speed, efficiency, or base operation of the Software.
"Upgrade(s)"	Means updates, patch installations, modifications, renovations, refreshes, enhancements, additions, substitutions and/or new versions or releases of Software or Equipment. For purposes hereof, a workaround or fix to Software or Equipment also constitutes an Upgrade.
"UPS"	Uninterruptible Power Supply.

Term	Definition
“Urgency”	Means a measure of the business criticality of an Incident or Problem based on the impact and on the business needs of VITA.
“Use”	Means to access, use, copy, configure, maintain, modify, enhance, install, perform, display, distribute and – where Source Code is made available pursuant to the terms of the Agreement – create derivative works.
“User”	Means a person who is authorized and uses the Service on a day-to-day basis.
“User Computing Equipment”	Means the Equipment supporting End User Computing Services.
“USPS”	United States Postal Service.
“Utility Server Infrastructure Stack Software”	Means Antivirus Software, E-mail / Collaborative Software, Infrastructure Management Software, Operating Software, and Utility / Monitoring & Management Software used in the operation of Utility Servers.
“Utility Server(s)”	Means the following types of Servers: Email, Enterprise SMTP Relay, File and Print, Enterprise Gateway, Presentation/Terminal, and Identity Management Solutions.
“VCE”	Virtual Communications Express – The Supplier’s hosted Unified Communications service including voice services as well as a full suite of collaboration tools.
“Version(s)”	Means major Software Upgrades that generally add function to existing Software and may be provided by the Software vendor at a fee over and above the standard Software maintenance costs.
“Versioned”	Means changes that are rolled out in distinct releases, the version of the release is maintained in the artifacts being rolled out for compatibility, prior versions are phased out over time through a standard process and all changes are documented.
“VIP”	Very Important Person.
“VIP Users”	VIPs identified by VITA to receive prioritized or specialized support, as further indicated within the Agreement and the Service Management Manual.
“Virtual Server”	Means an individual Server simulated or existing on a process and memory.
“Virtual Private Network” or “VPN”	Means a network that uses a public telecommunication infrastructure, such as the Internet, to provide remote offices or remote users with secure access to their organization's network.
“VITA”	Virginia Information Technologies Agency, an agency of the Commonwealth of Virginia pursuant to Chapter 20.1 (§§2.2-2005 et seq.) of the <u>Code of Virginia</u> .
“VITA Data”	Means: (i) all data and information in any form, whether or not Confidential Information, entered in software or equipment, directly or indirectly, by or on behalf of VITA or another Customer under or in connection with the Agreement (including Personally Identifiable Information), including any data originated or provided by VITA, Customers, Supplier or any other Integrated Supplier, or other third parties; (ii) all data and information, whether or not Confidential Information, directly or indirectly obtained by Supplier from, in connection with or as a result of the Services or the Agreement (including Personally Identifiable Information), including in connection with the negotiation and execution of the Agreement; and (iii) all data and information derived from the above information. VITA Data includes Content.
“VITA Equipment”	Means Equipment owned or leased by VITA and provided to Supplier in connection with the Services.

Term	Definition
"VITA Facilities"	Means the facilities that are provided by VITA or a Customer for the use of Supplier to the extent necessary to provide the Services.
"VITA Governance"	The forums, teams, and processes indicated in <b>Exhibit 1.2 (Governance Structure)</b> .
"VITA Indemnitee"	Means, collectively, the Commonwealth, VITA, Customers, and their respective officers, directors, customers, employees, agents, representatives, successors and assigns.
"VITA Intellectual Property" or "VITA IP"	Means all Intellectual Property: (a) acquired, licensed or developed by VITA or any of the Customers prior to the commencement of the Supplier's work on behalf of VITA under the Agreement; or (b) which was acquired, licensed or developed by VITA or any Customer independent of the Agreement, and in each case modifications, enhancements and improvements thereto that are not the Supplier Materials.
"VITA Leased Equipment"	Means equipment leased by VITA (or a Customer) that is made available to the Supplier for use in providing the Services.
"VITA Licensed Software"	Means software that is licensed by VITA (or a Customer) from a third party and is made available by VITA to the Supplier for use in providing the Services.
"VITA Owned Equipment"	Means equipment owned by VITA (or a Customer) that is made available to the Supplier for use in providing the Services.
"VITA Owned Materials"	Means any Materials authored or owned by VITA.
"VITA Owned Software"	Means software owned by VITA (or a Customer) that is made available to the Supplier for use in providing the Services.
"VITA Rules"	Means (i) the standards, policies, practices, processes, procedures, project management methodologies, and controls of VITA and the Customers to be adhered to and enforced by Supplier in the performance of the Services, as updated from time to time and of which Supplier is notified, and (ii) the other IT technologies, architectures and standards of which Supplier is notified. VITA Rules includes policies that are applicable at or to VITA Facilities, including security procedures which have been communicated or made available to Supplier or Supplier Personnel by such means as are generally used by VITA or Customers to disseminate or make available such information to its employees or contractors. VITA makes available most standards and guidelines at this public website: <a href="http://www.vita.virginia.gov/default.aspx?id=6442475453">http://www.vita.virginia.gov/default.aspx?id=6442475453</a> .
"VITA Sites"	Means a location that is controlled by VITA or a Customer.
"VITA Software"	Means the Software owned or exclusively licensed by VITA (or other Customer) that is not Third Party Software or Supplier Software and used by Supplier in providing the Services.
"VITA Third Party Contracts"	Means third party contracts of VITA (or a Customer) that are made available to the Supplier for use in providing the Services.
"VITA Third Party Software"	Means Software Applications developed by Third Parties and licensed to VITA.
"Voice Switch Services"	Means the Equipment and associated attachments, features, accessories, peripherals, and Cabling supported or used by Supplier in connection with its provision of voice services to the Users, using PBX(s), VoIP PBX, Hybrids, or hosted PBX, handsets, key systems, small office/home communications systems, and related environmental controls.
"Virtual Private Network" or "VPN"	Means a network or communication service that uses a public telecommunication infrastructure, such as the Internet, to provide remote

Term	Definition
	offices or remote users with various levels of private/secure access to their organization's network.
"VPRA"	Virginia Public Records Act.
"VRIS"	Vital Records Information System.
"VRS"	Virginia Retirement System.
"VRU"	Voice Response Unit.
"VTAM"	Virtual Telecommunications Access Method.
"W3C"	World Wide Web Consortium.
"WAN Equipment"	Means the Equipment and associated attachments, features, accessories, peripherals, and Cabling supported or used by Supplier in connection with its provision of WAN Services to the Users (e.g., routers, multiplexers, access circuits, backbone circuits, channel banks, CSU/DSUs, and associated diagnostic equipment), and all additions, modifications, substitutions, upgrades, or enhancements to such Equipment.
"WAP"	Wireless Access Points.
"Web Portal "	See "Portal."
"Web Service Registry and Repository" or "WSRR"	Means a set of functions for service-oriented architecture (SOA), enterprise applications for SOAP and REST services to enables service lifecycle governance optimize productivity and resources in an SOA environment.
"WINS"	Windows Internet Naming Service.
"Wiring"	Means the physical wire connection within walls, between floors, and between buildings.
"WLAN"	Wireless Local Area Network
"Work Product"	Means any Materials (including documents, drawings, designs, computer code, or other tangible form or medium in which a work of authorship or expression is fixed), in each case produced by the Supplier Personnel as part of the Services and delivered to VITA in the course of performing the Services, including materials produced jointly with another party.
"WSS"	Windows SharePoint Services.
"WWW" or "Web"	World Wide Web.
"Wireless LAN Controller"	The equipment that handles the system-wide functions of Managed WLAN, including security policies, intrusion prevention, radio frequency management, and quality of service.
"Wireless Private Network"	Suppliers portfolio of cellular data services such as 4G and 5G based solutions.
"XHTML"	Extended Hyper Text Markup Language.
"YOS"	Years of Service.
"YTD"	Year to Date.

Virginia Information Technologies Agency



**Exhibit 5.1**

**Key Personnel**

November 9, 2020

**COMMONWEALTH OF VIRGINIA  
VIRGINIA INFORMATION TECHNOLOGIES AGENCY (VITA)  
SUPPLIER STRATEGY AND PERFORMANCE DIVISION**

11751 MEADOWVILLE LANE  
CHESTER, VIRGINIA 23836

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## 1.0 Introduction

This Exhibit contains the list of Key Personnel. The Key Personnel and Essential Personnel will be highly qualified and capable of fulfilling the responsibilities of their positions.

KEY PERSONNEL					
Role Title	On-Site / Off-Site	Leverage / Dedicated	Name	Years of Experience	Tenure with Company
Account Executive	On-Site/ Richmond	Dedicated	Eric Adkins	10+	18+
Account Manager	On-Site/ Richmond	Dedicated	Mark Belzile	22+	22+
Chief Operations Manager	Off -Site/ Cary, NC	Leverage	Suki Loy	18+	14+
Managed Services Supervisor	Off -Site/ Cary, NC	Leverage	Terry Sayre	23+	18+
Chief Architect: Engineering Design Authority	On-Site/ Richmond	Dedicated	Louis Prestipino	8	0
Lead Business Relationship Manager	On-Site/ Richmond	Dedicated	Susan Berry Jenny Derr	10+ 10+	22+ 18+
Implementation Project Executive	On-Site/ Richmond	Dedicated (during Transition)	Thomas Oran	10+	13+
Implementation Project Manager	Off-Site/ Cary, NC	Dedicated (during Transition)	Mitch Franklin	5-10	1+
Program Management Office Manager	On-Site/ Richmond	Dedicated	Mary Lynn Saady	11	11
Continuous Service Improvement Manager	On-Site/ Richmond	Dedicated	Bryan Skevington	2-5	5+

KEY PERSONNEL					
Role Title	On-Site / Off-Site	Leverage / Dedicated	Name	Years of Experience	Tenure with Company
Information Security Manager	On-Site/ Richmond	Dedicated	Sean Parrish	5+	2+

Clerk's Office  
State Corporation Commission  
1300 E. Main Street  
Richmond, Virginia 23219

Please file the attached documents.

Special Instructions:

Please send evidence to [CLS-VAEvidence@wolterskluwer.com](mailto:CLS-VAEvidence@wolterskluwer.com) .

**If there are any problems with the filing, please call us at (804) 217-7255.**

Thank you,

*Katie Bush*

Katie Bush  
CT Corporation System  
Richmond Fulfillment Office  
4701 Cox Road  
Suite 285  
Glen Allen, VA 23060  
804-217-7255  
[CLS-VAEvidence@wolterskluwer.com](mailto:CLS-VAEvidence@wolterskluwer.com)



Form  
**LLC1052**  
(Rev. 11/19)

State Corporation  
Commission

## Application for Certificate of Registration to Transact Business in Virginia as a Foreign Limited Liability Company

I The foreign limited liability company's name: VERIZON BUSINESS NETWORK SERVICES LLC

The designated name (if required): \_\_\_\_\_

The state or other jurisdiction of organization: Delaware

The date of formation: 6/30/2020 The period of duration: perpetual

**(Mark box, if applicable.)**  The LLC was previously authorized or registered to transact business in Virginia as a foreign business entity. **Provide additional information. (See Instructions.)**

II The LLC's principal office address, including the street and number (if any), is

One Verizon Way, Basking Ridge, NJ 07920  
(number/street) (city or town) (state) (zip)

III The name of the LLC's registered agent in VIRGINIA: C T Corporation System

The registered agent is: **(Mark appropriate box.)**

(1) an **INDIVIDUAL** who is a resident of Virginia **and**

- a member or manager of the LLC.
- a member or manager of a limited liability company that is a member or manager of the LLC.
- an officer or director of a corporation that is a member or manager of the LLC.
- a general partner of a general or limited partnership that is a member or manager of the LLC.
- a trustee of a trust that is a member or manager of the LLC.
- a member of the Virginia State Bar.

**OR**

(2)  a Virginia or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in Virginia.

IV A. The LLC's VIRGINIA registered office address, including the street and number, if any, which is identical to the business office of the registered agent, is

4701 Cox Road, Suite 285 Glen Allen, VA 23060  
(number/street) (city or town) (zip)

B. The registered office is physically located in the  county or  city of Henrico


### Affirmation Statements

The Clerk of the Commission is irrevocably appointed as the agent of the limited liability company for service of process if (i) the LLC fails to maintain a registered agent in Virginia, (ii) the Virginia registered agent's authority is revoked, (iii) the Virginia registered agent resigns, or (iv) the Virginia registered agent cannot be found or served with the exercise of reasonable diligence.

The LLC affirms that it is a "foreign limited liability company" as defined in the Code of Virginia.

### Signature

*The official signing this document has been delegated the right and power to manage the company's business affairs and affirms the above statements are true.*

<p><u></u>  <b>Signature</b></p>	<p><u>7/21/2020</u>  <b>Date</b></p>	<p>_____  <b>Tel. # (optional)</b></p>
<p><u>Christy K. Reyes</u>  <b>Printed Name</b></p>	<p>_____  <b>Authorized Person</b></p>	<p>_____  <b>Email Address (optional)</b></p>
<p>_____  <b>Business Tel. # (optional)</b></p>	<p>_____  <b>Business Email Address (optional)</b></p>	

**Required Fee: \$100.00**

**See Instructions that follow**

## VA Conversion Attachment

Verizon Business Network Services Inc., a Delaware corporation, converted to Verizon Business Network Services, LLC, a Delaware limited liability company, on 6/30/2020. Verizon Business Network Services Inc. was qualified with the Virginia Corporation Commission with identification number F0268161.

# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THAT THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF CONVERSION OF A DELAWARE CORPORATION UNDER THE NAME OF "VERIZON BUSINESS NETWORK SERVICES INC." TO A DELAWARE LIMITED LIABILITY COMPANY, CHANGING ITS NAME FROM "VERIZON BUSINESS NETWORK SERVICES INC." TO "VERIZON BUSINESS NETWORK SERVICES LLC", FILED IN THIS OFFICE ON THE TWENTY-SECOND DAY OF JUNE, A.D. 2020, AT 1:56 O`CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF CONVERSION IS THE THIRTIETH DAY OF JUNE, A.D. 2020 AT 11:57 O`CLOCK P.M.



  
Jeffrey W. Bullock, Secretary of State

788723 8100V  
SR# 20206554143

Authentication: 203398000  
Date: 08-03-20

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

**CERTIFICATE OF CONVERSION TO LIMITED LIABILITY COMPANY**  
**OF**  
**VERIZON BUSINESS NETWORK SERVICES INC.**  
**TO**  
**VERIZON BUSINESS NETWORK SERVICES LLC**

This Certificate of Conversion to Limited Liability Company has been duly executed and is being filed by Verizon Business Network Services Inc., a Delaware corporation (the "Corporation"), and Christy K. Reyes, Assistant Secretary of the Corporation and as an authorized person, to convert the Corporation to a Delaware limited liability company pursuant to Section 18-214 of the Delaware Limited Liability Company Act.

1. The name of the Corporation is Verizon Business Network Services Inc.
2. The date of filing of the original certificate of incorporation of the Corporation with the Secretary of State of the State of Delaware is February 2, 1973.
3. The name of the limited liability company into which the Corporation is being converted is Verizon Business Network Services LLC.
4. The conversion of the Corporation into a limited liability company has been approved in accordance with the provisions of Section 266 of the Delaware General Corporation Law.
5. The conversion of the Corporation to a limited liability company shall become effective as of June 30, 2020 at 11:57 PM.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Conversion to Limited Liability Company on the 22<sup>nd</sup> day of June, 2020.



---

Name: Christy K. Reyes  
Title: Assistant Secretary and  
Authorized Person

# Delaware

Page 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "VERIZON BUSINESS NETWORK SERVICES LLC", FILED IN THIS OFFICE ON THE TWENTY-SECOND DAY OF JUNE, A.D. 2020, AT 1:56 O`CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF FORMATION IS THE THIRTIETH DAY OF JUNE, A.D. 2020 AT 11:57 O`CLOCK P.M.



  
Jeffrey W. Bullock, Secretary of State

788723 8100  
SR# 20206554143

Authentication: 203398001  
Date: 08-03-20

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 01:56 PM 06/22/2020  
FILED 01:56 PM 06/22/2020  
SR 20205823380 - File Number 788723

## CERTIFICATE OF FORMATION

OF

### VERIZON BUSINESS NETWORK SERVICES LLC

The undersigned, as an authorized person, in order to form a limited liability company under the provisions of the Delaware Limited Liability Company Act (6 Del.C. § 18-101, et seq.), does hereby certify as follows:

FIRST: The name of the limited liability company formed hereby is:

Verizon Business Network Services LLC

SECOND: The address of the limited liability company's registered office in the State of Delaware is: Corporation Trust Center, 1209 Orange Street, City of Wilmington, Delaware 19801, and the name of the registered agent is The Corporation Trust Company.

THIRD: The Certificate of Formation shall be effective as of June 30, 2020 at 11:57 PM.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation as of the 22<sup>nd</sup> day of June, 2020.



Name: Christy K. Reyes  
Authorized Person

Clerk's Office  
State Corporation Commission  
1300 E. Main Street  
Richmond, Virginia 23219

Please file the attached documents.

Special Instructions:

Please send evidence to [CLS-VAEvidence@wolterskluwer.com](mailto:CLS-VAEvidence@wolterskluwer.com) .

***If there are any problems with the filing, please call us at (804) 217-7255.***

Thank you,

*Teresa Brown*

Teresa Brown  
CT Corporation System  
Richmond Fulfillment Office  
4701 Cox Road  
Suite 285  
Glen Allen, VA 23060  
804-217-7255  
[CLS-VAEvidence@wolterskluwer.com](mailto:CLS-VAEvidence@wolterskluwer.com)



Form  
**LLC1052**  
(Rev. 11/19)

State Corporation  
Commission

## Application for Certificate of Registration to Transact Business in Virginia as a Foreign Limited Liability Company

I The foreign limited liability company's name: MCI COMMUNICATIONS SERVICES LLC

The designated name (if required): \_\_\_\_\_

The state or other jurisdiction of organization: Delaware

The date of formation: 6/30/2020 The period of duration: perpetual

(Mark box, if applicable.)  The LLC was previously authorized or registered to transact business in Virginia as a foreign business entity. Provide additional information. (See Instructions.)

II The LLC's principal office address, including the street and number (if any), is  
One Verizon Way, Basking Ridge, NJ 07920  
(number/street) (city or town) (state) (zip)

III The name of the LLC's registered agent in VIRGINIA: C T Corporation System

The registered agent is: (Mark appropriate box.)

(1) an INDIVIDUAL who is a resident of Virginia and

- a member or manager of the LLC.
- a member or manager of a limited liability company that is a member or manager of the LLC.
- an officer or director of a corporation that is a member or manager of the LLC.
- a general partner of a general or limited partnership that is a member or manager of the LLC.
- a trustee of a trust that is a member or manager of the LLC.
- a member of the Virginia State Bar.

**OR**

(2)  a Virginia or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in Virginia.

IV A. The LLC's VIRGINIA registered office address, including the street and number, if any, which is identical to the business office of the registered agent, is  
4701 Cox Road, Suite 285 Glen Allen, VA 23060  
(number/street) (city or town) (zip)

B. The registered office is physically located in the  county or  city of Henrico

### Affirmation Statements

The Clerk of the Commission is irrevocably appointed as the agent of the limited liability company for service of process if (i) the LLC fails to maintain a registered agent in Virginia, (ii) the Virginia registered agent's authority is revoked, (iii) the Virginia registered agent resigns, or (iv) the Virginia registered agent cannot be found or served with the exercise of reasonable diligence.

The LLC affirms that it is a "foreign limited liability company" as defined in the Code of Virginia.

### Signature

The official signing this document has been delegated the right and power to manage the company's business affairs and affirms the above statements are true.

Christy K. Reyes 7/10/2020 \_\_\_\_\_  
Signature Date Tel. # (optional)

Christy K. Reyes \_\_\_\_\_  
Printed Name Title Email Address (optional)

\_\_\_\_\_ Business Tel. # (optional) Business Email Address (optional)

**Required Fee: \$100.00**

**See Instructions that follow**

## VA Conversion Attachment

MCI Communications Services, Inc. a Delaware corporation, converted to MCI Communications Services LLC, a Delaware limited liability company, on 6/30/2020. MCI Communications Services, Inc. was qualified with the Virginia Corporation Commission with identification number F1207275.

# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THAT THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF CONVERSION OF A DELAWARE CORPORATION UNDER THE NAME OF "MCI COMMUNICATIONS SERVICES, INC." TO A DELAWARE LIMITED LIABILITY COMPANY, CHANGING ITS NAME FROM "MCI COMMUNICATIONS SERVICES, INC." TO "MCI COMMUNICATIONS SERVICES LLC", FILED IN THIS OFFICE ON THE TWENTY-SECOND DAY OF JUNE, A.D. 2020, AT 2:05 O`CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF CONVERSION IS THE THIRTIETH DAY OF JUNE, A.D. 2020 AT 11:59 O`CLOCK P.M.



  
Jeffrey W. Bullock, Secretary of State

**CERTIFICATE OF CONVERSION TO LIMITED LIABILITY COMPANY**

**OF**

**MCI COMMUNICATIONS SERVICES, INC.**

**TO**

**MCI COMMUNICATIONS SERVICES LLC**

This Certificate of Conversion to Limited Liability Company has been duly executed and is being filed by MCI Communications Services, Inc., a Delaware corporation (the "Corporation"), and Christy K. Reyes, Assistant Secretary of the Corporation and as an authorized person, to convert the Corporation to a Delaware limited liability company pursuant to Section 18-214 of the Delaware Limited Liability Company Act.

1. The name of the Corporation is MCI Communications Services, Inc.
2. The date of filing of the original certificate of incorporation of the Corporation with the Secretary of State of the State of Delaware is January 3, 1992
3. The name of the limited liability company into which the Corporation is being converted is MCI Communications Services LLC.
4. The conversion of the Corporation into a limited liability company has been approved in accordance with the provisions of Section 266 of the Delaware General Corporation Law.
5. The conversion of the Corporation to a limited liability company shall become effective as of June 30, 2020 at 11:59 PM.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Conversion to Limited Liability Company on the 22<sup>nd</sup> day of June, 2020.



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Name: Christy K. Reyes  
Title: Assistant Secretary and  
Authorized Person

# Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "MCI COMMUNICATIONS SERVICES LLC", FILED IN THIS OFFICE ON THE TWENTY-SECOND DAY OF JUNE, A.D. 2020, AT 2:05 O`CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF FORMATION IS THE THIRTIETH DAY OF JUNE, A.D. 2020 AT 11:59 O`CLOCK P.M.



  
Jeffrey W. Bullock, Secretary of State

2283958 8100  
SR# 20206590213

Authentication: 203411155  
Date: 08-05-20

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 01:17 PM 06/22/2020  
FILED 02:05 PM 06/22/2020  
SR 20205823394 - File Number 2283958

## CERTIFICATE OF FORMATION

OF

### MCI COMMUNICATIONS SERVICES LLC

The undersigned, as an authorized person, in order to form a limited liability company under the provisions of the Delaware Limited Liability Company Act (6 Del.C. § 18-101, et seq.), does hereby certify as follows:

FIRST: The name of the limited liability company formed hereby is:

MCI Communications Services LLC

SECOND: The address of the limited liability company's registered office in the State of Delaware is: Corporation Trust Center, 1209 Orange Street, City of Wilmington, Delaware 19801, and the name of the registered agent is The Corporation Trust Company.

THIRD: The Certificate of Formation shall be effective as of June 30, 2020 at 11:59 PM.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation as of the 22<sup>nd</sup> day of June, 2020.



Name: Christy K. Reyes  
Authorized Person

## Audit Trail for Verizon Signature by -- Finance

DB# 1472908

Customer Name: COMMONWEALTH OF VIRGINIA

ContractID: 494976

Customer Sign Date:

Date Sent for Signature: 11/12/2020

Date PDF Was Printed:

Date Record Was Assigned: 11/12/2020 16:50:32

POC Accepting The Record: OBI.ROMAINE@ONE.VERIZON.COM

Date Signed Document Uploaded: 11/12/2020 17:47:39