



Information Technology Broadband Services Contract

VA-191201-IPA

between

The Virginia Information Technologies Agency

on behalf of

The Commonwealth of Virginia

and

IP Access International, LLC

**CONTRACTUAL TERMS AND CONDITIONS
BROADBAND SERVICES CONTRACT
TABLE OF CONTENTS**

1. PURPOSE AND SCOPE	1
2. DEFINITIONS	1
A. Acceptance	1
B. Agent	1
C. Claim	1
D. Code	1
E. Commonwealth	1
F. Commonwealth Indemnified Parties	1
G. Computer Virus	1
H. Confidential Information	1
I. Contract	2
J. Contractor	2
K. Direct Service Plan ("DSP")	2
L. Direct Service Plan ("DSP") Participant	2
M. Documentation	2
N. E-rate Program	2
O. Effective Date	2
P. Eligible E-Rate Entity	2
Q. Eligible Services	2
R. Industrial Funding Adjustment ("IFA")	2
S. Ordering Officer	2
T. Party	3
U. Realized Sales	3
V. Requirements	3
W. Service	3
X. Subcontractor	3
Y. Subscriber	3
Z. Supplier	3
AA. Supplier Personnel	3
BB. Supplier Reporting System ("SRS")	3
CC. SWaM	3
DD. Telecommunications Work Order ("TWO")	3
EE. Term	3
FF. Transition Period	3
GG. VITA	3
HH. Warranty Period	4
3. TERM AND TERMINATION	4
A. Contract Term	4
B. Termination for Convenience	4
C. Termination for Breach	4
D. Termination for Non-Appropriation of Funds	4
E. Termination by Supplier	4
F. Effect of Termination	5
G. Transition of Services	5
H. Contract Kick-Off Meeting	5
I. Contract Closeout	5
4. SERVICES	5
A. Nature of Services and Engagement	5
B. Substitution of Services	6
5. SUPPLIER PERSONNEL	6
A. Selection and Management of Supplier Personnel	6

B.	Supplier Personnel Supervision	6
C.	Subcontractors	6
6.	GENERAL WARRANTY	6
A.	Ownership	6
B.	Performance	7
C.	Services Warranty and Remedy	7
D.	Supplier's Viability	7
E.	Supplier's Past Experience	7
7.	SERVICES	7
A.	Nature of Services and Engagement	7
B.	Availability of Supplier's Services	7
8.	RATES, ORDERING, AND COMPENSATION	8
A.	Non-Exclusivity	8
B.	E-rate	8
C.	Direct Service Plan (DSP)	8
D.	Telecommunications Work Orders	8
E.	Ordering Officer(s)	9
F.	Purchase Price and Price Protection	9
G.	Regulatory Fees and Other Surcharges	9
H.	Service Offerings Update	9
9.	INVOICE PROCEDURES	10
A.	Invoice Submission	10
B.	Invoice and Payment Terms	10
C.	Disputed Charges	10
D.	Overpayment	11
10.	SUPPLIER PERFORMANCE REPORTING	11
11.	MONTHLY REPORTING	11
A.	Amount of Realized Sales	11
B.	Small Business Procurement and Subcontracting Spend	11
12.	CONFIDENTIALITY	12
A.	Treatment and Protection	12
B.	Exclusions	12
C.	Return or Destruction	12
D.	Confidentiality Statement	12
E.	Freedom of Information Act Acknowledgement	12
13.	INDEMNIFICATION	13
A.	Indemnification Generally	13
B.	Defense of Claims	13
C.	Duty to Replace or Reimburse	13
D.	Supplier Dispute of Obligation to Indemnify	13
14.	LIABILITY	13
A.	Supplier Liability	13
B.	Limitation of Liability	14
15.	SECURITY COMPLIANCE	14
16.	BANKRUPTCY	14
17.	IMPORT/EXPORT	14
18.	GENERAL PROVISIONS	14
A.	Relationship Between VITA, Services Recipients and Supplier	14
B.	Licensing Within the Commonwealth	15
C.	Licenses and Permits	15
D.	Incorporated Contractual Provisions	15
E.	Compliance with the Federal Lobbying Act	15

F.	Ethics in Public Contracting	16
G.	Governing Law	16
H.	Dispute Resolution	16
I.	Assignment	16
J.	Severability	17
K.	Survival	17
L.	Force Majeure	17
M.	No Waiver	17
N.	Remedies	17
O.	Right to Audit	17
P.	Taxes	17
Q.	Currency	17
R.	Advertising and Use of Proprietary Marks	17
S.	Most Favored Customer	18
T.	Notices	18
U.	Contract Administration and Account Management	18
V.	Captions	18
W.	Entire Contract	18
X.	Order of Precedence	19
Y.	Counterparts and Electronic Signatures	19
Z.	Opportunity to Review	19
EXHIBIT A – PRICING		21
EXHIBIT B – SERVICE REQUIREMENTS		22
A.	Installation Date	22
B.	Installation	22
C.	Acceptance	22
D.	Service Levels and Remedies	23
EXHIBIT C – TELECOMMUNICATIONS WORK ORDER (TWO) EXAMPLE		24
EXHIBIT D – CERTIFICATION REGARDING LOBBYING		25
EXHIBIT E – INDIVIDUALS AUTHORIZED TO ORDER SERVICES		26
EXHIBIT F – QUARTERLY PERFORMANCE REPORT		27

CONTRACTUAL TERMS AND CONDITIONS BROADBAND SERVICES CONTRACT

THIS BROADBAND SERVICES CONTRACT ("**Contract**") is entered into by and between the Virginia Information Technologies Agency ("**VITA**"), pursuant to § [2.2-2012](#) of the *Code of Virginia* ("**Code**") and on behalf of the Commonwealth of Virginia ("**Commonwealth**"), and IP Access International ("**Supplier**"), a Limited Liability Company (LLC) headquartered at 31831 Camino Capistrano, Suite 300A, San Juan Capistrano, CA 92675, to be effective as of the date set forth on the signature page of this Contract ("**Effective Date**").

1. PURPOSE AND SCOPE

VITA is seeking broadband internet access services of various technologies, services and bandwidth levels ranging a minimum download speed of <1 Mbps up to a minimum download speed of 10,000 Mbps. The services are to be of high reliability to be able to support a consistent throughput for access to various Commonwealth applications via secure VPN connections.

This Contract sets forth the terms and conditions under which Supplier shall provide to VITA for the benefit of any public body as defined by § [2.2-4301](#) and referenced by § [2.2-4304](#) and § [2.2-2012](#) of the *Code of Virginia*; any private institution of higher education which is listed at <http://www.civv.org/Our-Colleges/Profiles.aspx>; some of whom may be authorized by VITA as a DSP Participant (as defined below) for the Services the Supplier has been awarded under this Contract.

2. DEFINITIONS

A. Acceptance

Successful performance of the Services at the designated location, or completed Acceptance testing in conformance with the requirements as determined by VITA in the applicable order.

B. Agent

Any third party independent agent of any Authorized User.

C. Claim

Any and all losses, damages, claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, assessments, fines, penalties (whether criminal or civil), judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements), and costs. Collectively, "Claims".

D. Code

The *Code of Virginia*, as amended, and all laws in the titles, chapters, articles and sections contained therein.

E. Commonwealth

The Commonwealth of Virginia.

F. Commonwealth Indemnified Parties

Means, collectively and individually, the Commonwealth, VITA, any Services Recipient or Authorized User, their officers, directors, agents, and employees.

G. Computer Virus

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.

H. Confidential Information

Any confidential or proprietary information of a Party that is disclosed in any manner, including oral or written, graphic, machine readable or other tangible form, to any other Party in connection

with or as a result of discussions related to this Contract or any order or SOW issued hereunder, and which at the time of disclosure either:

- (i) is marked as being "Confidential" or "Proprietary";
- (ii) is otherwise reasonably identifiable as the confidential or proprietary information of the disclosing Party; or
- (iii) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information of the disclosing Party; or
- (iv) is identifiable or should be reasonably considered as protected health information;
- (v) any personally identifiable information, including information about VITA's employees, contractors, and customers, that is protected by statute or other applicable law.

I. Contract

This agreement, including all exhibits, schedules, and attachments, entered into by VITA and Supplier.

J. Contractor

The use of the term "Contractor" in any of the following terms, conditions, links, or IRS Publication 1075 means the same as the term "Supplier," as defined and used in this Contract.

K. Direct Service Plan ("DSP")

A provision for certain public bodies, authorized by VITA in writing, to order services from the Supplier and be billed directly for those services.

L. Direct Service Plan ("DSP") Participant

Any public body, as defined by § [2.2-4301](#) and referenced by § [2.2-4304](#) and § [2.2-2012](#) of the Code, or any private institution of higher education chartered in Virginia and granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code who VITA prequalifies and grants written authority to participate in the DSP.

M. Documentation

Those materials (including user manuals, training materials, guides, product descriptions, technical manuals, product specifications, supporting materials and Updates) detailing the information and instructions needed in order to allow any Authorized User and its agents to make productive use of the Services, including any and all components.

N. E-rate Program

The universal service "Schools and Libraries Program" administered by the Universal Service Administrative Company ("USAC") under the oversight of the Federal Communications Commission, or successor program.

O. Effective Date

The date this Contract goes into full force and effect as set forth in the preamble of this Contract above.

P. Eligible E-Rate Entity

A school or library meeting the USAC definition of an "Eligible Entity" under the universal Schools and Libraries Program.

Q. Eligible Services

Products and services that are eligible for E-rate support.

R. Industrial Funding Adjustment ("IFA")

The fee paid by Supplier to VITA to compensate VITA for the cost of procuring and managing the Contract.

S. Ordering Officer

Any individual authorized by VITA to issue orders for the Services provided by Supplier under this Contract.

- T. Party**
Supplier, VITA, or a public body (as defined by § [2.2-4301](#) and referenced by § [2.2-4304](#) and § [2.2-2012](#) of the Code), any private institution of higher education that is listed at <http://www.cicv.org/Our-Colleges/Profiles.aspx>.
- U. Realized Sales**
Sales under this Contract for which Supplier has received full and complete payment from an Authorized User.
- V. Requirements**
The functional, performance, operational, compatibility, Acceptance testing criteria and other parameters and characteristics of the Service(s) as set forth in [Exhibit B](#), "Service Requirements" and [Exhibit A](#), "Pricing" and the applicable order and such other parameters, characteristics, or performance standards that may be agreed upon in writing by the Parties.
- W. Service**
Any work performed or service provided by Supplier under this Contract for the benefit of VITA or any other Party on whose behalf VITA has placed an order with Supplier. .
- X. Subcontractor**
Any group or person that furnishes supplies or services to the Commonwealth on behalf of Supplier or another Subcontractor in performance of this Contract.
- Y. Subscriber**
The end user or recipient of the Services ordered by an Authorized User and provided pursuant to this Contract.
- Z. Supplier**
The entity set forth in the preamble of this Contract and any entity that controls, is controlled by, or is under common control with Supplier.
- AA. Supplier Personnel**
Any and all of Supplier's employees, agents, contractors, or subcontractors performing under this Contract.
- BB. Supplier Reporting System ("SRS")**
The VITA system used by Supplier to fulfill reporting obligations under this Contract. The SRS can be accessed at the following URL(s): <http://vita2.virginia.gov/procurement/srs/>, or any successor URL(s).
- CC. SWaM**
Any entity certified by the Commonwealth's Department of Small Business and Supplier Diversity as a small, women-owned, minority-owned, or service disabled veteran-owned business, as defined in Code §§ [2.2-2000.1](#) and [2.2-4310](#), or a certified micro business as defined in Executive Order Number 20 (2014).
- DD. Telecommunications Work Order ("TWO")**
An order for telecommunications services issued by VITA to a supplier of telecommunications services. For purposes of this Contract, a TWO refers to an order for Services, in substantially the form of [Exhibit C](#) to this Contract, issued by VITA to Supplier. Any TWO will constitute an order.
- EE. Term**
The period of time beginning with the Effective Date and lasting for the length of time, including any extension periods, set forth in the "Contract Term" section below, during which this Contract will be in full force and effect.
- FF. Transition Period**
The period of time after the expiration or termination of the Contract that, Supplier is obligated to continue providing assistance to VITA so as to transition the Supplier's contractual obligations, or any portion thereof, to any other supplier.
- GG. VITA**
The Virginia Information Technologies Agency, an agency of the Commonwealth of Virginia pursuant to Chapter 20.1 (§§ [2.2-2005](#) *et seq.*) of the Code, or any successor agency.

HH. Warranty Period

All Services purchased under this Contract remain under warranty for the period of time commencing after acceptance by VITA and continuing through expiration of the Contract or discontinuance of the Services at the discretion of VITA.

3. TERM AND TERMINATION

A. Contract Term

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, shall continue to be effective and legally binding through June 30, 2021 ("Term"). VITA, at its sole option, may extend the term of this Contract for up to Four (4) additional one (1) year periods after the expiration of the initial Term (collectively, the "Term"). VITA will issue a written notification to the Supplier stating the extension period, not less than 30 calendar days prior to the expiration of any current term. All terms and conditions, and rates and charges, will remain in full force and effective until the end of the Term.

Performance of an order issued during the term of this Contract may survive the expiration of the term of this Contract, in which case all terms and conditions required for the operation of such order shall remain in full force and effect until Services pursuant to such order have met the final Acceptance criteria of the applicable Authorized User.

B. Termination for Convenience

VITA may terminate this Contract, in whole or in part, or any order issued hereunder, in whole or in part, upon not less than 30 calendar days prior written notice at any time for any reason. Any termination under this provision will not affect the rights and obligations attending any order outstanding at the termination date.

In the event VITA awards a contract which contains pricing other than month to month, any order containing line items with such pricing may be terminated, in whole or in part, for any reason during the first 60 calendar days and thereafter at any time after completion of 12 months service.

C. Termination for Breach

In the event of breach by the Supplier, VITA will have the right to terminate this Contract, in whole or in part, and a DSP Participant may terminate an order issued hereunder, in whole or in part. Supplier will be deemed in breach in the event that Supplier fails to meet any material obligation set forth in this Contract or in any order or SOW issued hereunder. Any termination under the provisions of this section will be deemed a "Termination for Breach".

If VITA deems the Supplier to be in breach, VITA shall provide Supplier with notice of breach and allow Supplier 15 business days to cure the breach. If Supplier fails to cure the breach as noted, VITA may immediately terminate this Contract or any order issued pursuant to this Contract, in whole or in part. If a DSP Participant deems the Supplier to be in breach of an order, that DSP Participant shall provide Supplier with notice of breach and allow Supplier 15 business days to cure the breach. If Supplier fails to cure the breach as noted, the DSP Participant may immediately terminate its order, in whole or in part. In addition, if Supplier is found by a court of competent jurisdiction to be in violation of or to have violated 31 U.S.C. § 1352, or if Supplier becomes a party excluded from Federal Procurement and Nonprocurement Programs, VITA may immediately terminate this Contract, in whole or in part, for breach, and VITA shall provide written notice to Supplier of such termination. Supplier shall provide prompt written notice to VITA if Supplier is charged with violation of 31 U.S.C. § 1352, or if federal debarment proceedings are instituted against Supplier.

D. Termination for Non-Appropriation of Funds

All payment obligations of public bodies under this Contract are subject to the availability of legislative appropriations at the federal, state, or local level, for this purpose. In the event of non-appropriation of funds, irrespective of the source of funds, for the items under this Contract, VITA may terminate any order, in whole or in part, for those goods or services for which funds have not been appropriated. Written notice will be provided to the Supplier as soon as possible after legislative action is completed.

E. Termination by Supplier

In no instance will termination by Supplier be considered. Failure by an Authorized User to make timely payments owed to Supplier for its performance under this Contract will constitute a breach

by that Authorized User. Supplier's remedy for a breach is limited to the remedies set forth in Code § [2.2-4363](#) and the "Remedies" section of this Contract below.

Supplier may not unilaterally terminate any Service.

F. Effect of Termination

Upon termination, Commonwealth, nor VITA, will be responsible solely for Services rendered by Supplier prior to the termination date of the Contract or order.

In the event of a Termination for Breach, the Commonwealth, VITA, or the Services Recipient will be responsible solely for Services accepted prior to the termination date. Supplier shall refund any monies paid by VITA for Services that were not accepted by VITA.

The Commonwealth makes no assurances that any Service purchased under this Contract will remain in service for any minimum amount of time.

G. Transition of Services

Prior to or upon expiration or termination of this Contract, Supplier shall provide adequate information and all assistance reasonably required to transition Services to any other supplier with whom VITA contracts for provision of services identical or similar to the Services provided by Supplier pursuant to this Contract. Upon VITA's request, Supplier shall continue to provide Services for up to 24 months, on a month-to-month basis, following the expiration or termination date of the Contract. All rates, service level agreements, and terms and conditions of the Contract will apply during that period. The Supplier agrees that no material decrease in the Supplier's level of performance and support will occur during the Transition Period.

H. Contract Kick-Off Meeting

Within 30 calendar days of the Effective Date, Supplier may be required to attend a contract orientation meeting, along with the VITA contract manager/administrator, the VITA project manager(s), and any other significant stakeholders who have a part in the successful performance of this Contract. The purpose of this meeting will be to review all contractual obligations for both parties, all administrative and reporting requirements, and to discuss any other relationship, responsibility, communication and performance criteria set forth in the Contract. The Supplier may be required to have its assigned account manager and a representative from its contracts department in attendance. The time and location of this meeting will be coordinated with Supplier and other meeting participants by the VITA contract manager.

I. Contract Closeout

Prior to the contract's expiration date, Supplier may be provided contract close out documentation by VITA. If contract closeout documentation is provided, then Supplier shall complete, sign, and return to VITA Supply Chain Management any required documentation within 30 calendar days of receipt to ensure completion of closeout administration and to maintain a positive performance reputation with the Commonwealth. Any required closeout documentation not received within 30 calendar 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 to the Supplier, including final payment, until the documentation is returned to VITA.

4. SERVICES

A. Nature of Services and Engagement

Supplier is an independent contractor engaged to perform certain Services, including but not limited to installation and/or support activities for public bodies as described in [Exhibit A](#), "Pricing", and [Exhibit B](#), "Service Requirements". VITA reserves the right to order any of Supplier's Services at any time during the term of this Contract or any extension thereto. Notwithstanding all VITA's rights to obtain Supplier's Services under this Contract, neither VITA nor any public body is under any obligation to purchase any of Supplier's Services. This Contract is non-exclusive and VITA and all public bodies may, at their sole discretion and in accordance with applicable law and regulation, purchase, license or otherwise receive benefits from third party suppliers of services similar to, or in competition with, the services provided by Supplier.

B. Substitution of Services

During the term of this Contract, the Supplier is not authorized to substitute for any Service identified in Exhibit A, "Pricing" without the written permission of VITA. Violation of this condition may be considered grounds for termination of the Contract.

5. SUPPLIER PERSONNEL

A. Selection and Management of Supplier Personnel

Supplier shall ensure that all Supplier Personnel performing under this Contract are competent and knowledgeable of the contractual arrangements and the applicable order between Services Recipient and Supplier. Supplier acknowledges that Supplier is the employer of all Supplier Personnel and shall have the sole responsibility to supervise, counsel, discipline, review, evaluate, set the pay rates of, provide (to the extent required by law) health care and other benefits for, and terminate the employment of Supplier Personnel. Supplier shall be solely responsible for the supervision and conduct of Supplier Personnel, including all acts, omissions, gross negligence, and willful misconduct of Supplier Personnel. Additionally, Supplier shall ensure that Supplier Personnel comply with the appropriate Services Recipient's site security, information security and personnel conduct rules, as well as applicable federal, state and local laws, including export regulations. Services Recipient reserves the right to require the immediate removal from such Services Recipient's premises of any Supplier Personnel whom such Services Recipient believes has failed to comply with the above or whose conduct or behavior is unacceptable or unprofessional or results in a security or safety breach.

B. Supplier Personnel Supervision

Supplier acknowledges that Supplier, or any of its agents, contractors, or subcontractors, is and shall be the employer of Supplier personnel, and shall have sole responsibility to supervise, counsel, discipline, review, evaluate, set the pay rates of and terminate the employment of Supplier personnel.

C. Subcontractors

If an order issued pursuant to this Contract is supported in whole or in part with federal funds, Supplier shall not subcontract any Services pursuant to such order to any subcontractor that is a party excluded from Federal Procurement and Nonprocurement Programs. In no event shall Supplier subcontract any Services 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.

The Supplier will (i) be responsible for all work performed by subcontractors, (ii) be responsible for its (and their) compliance with the Contract, and (iii) guarantee the performance of any services provided by the Supplier's subcontractors (including, but not limited to, paying service credits associated with outages, liability for all subcontractors working in support of the Contract's requirements and those of any order placed thereunder, and adherence with all technical and operational specifications). The Supplier will be responsible for payment of its subcontractors and will indemnify the Commonwealth's Indemnified Parties against any claims resulting from Supplier's failure to pay, including discharging (at Supplier's expense) any liens obtained by the subcontractor.

6. GENERAL WARRANTY

THE OBLIGATIONS OF SUPPLIER UNDER THIS GENERAL WARRANTY SECTION ARE MATERIAL. SUPPLIER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY OTHER PARTICULAR PURPOSE.

Supplier warrants and represents to VITA that Supplier will fulfill its contractual obligations and meet all needed Requirements as described in Exhibit B. Supplier warrants and represents to VITA that:

A. Ownership

Supplier has the right to perform and provide all contractual obligations and provide all needed services and products without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.

B. Performance

With respect to Supplier's performance under this Contract:

- i). Supplier shall perform all Services with the care, skill and diligence, consistent with or above applicable professional standards currently recognized in Supplier's profession, and Supplier shall be responsible for the professional quality, technical accuracy, completeness and coordination of all plans, information, and specifications furnished under this Contract;
- ii). the Services provided under this Contract are pursuant to a particular solicitation, and therefore such Services and Deliverables shall be fit for the stated purposes specified by VITA. Supplier is possessed of superior knowledge with respect to the Services and is aware that VITA and Services Recipients on whose behalf VITA acquires Supplier's Services are relying on Supplier's skill and judgment in providing the Services;
- iii). Supplier shall ensure that any contractually-obligated Services meet or exceed the Requirements and that any Product will function in conformance with the Requirements; and
- iv). any Documentation that Supplier is required to provide under this Contract will be sufficient in detail and content to allow a properly trained user to fully utilize the Services without reference to any other materials or information.

C. Services Warranty and Remedy

Throughout the Contract term, including any extensions thereto, Supplier shall respond to and resolve reports of interruption of Service in compliance with the Services Levels specified in Exhibit B.

D. Supplier's Viability

Supplier warrants that it has the financial capacity to perform and continue to perform its obligations under this Contract. Supplier has no constructive or actual knowledge of a potential legal proceeding being brought against Supplier that could materially adversely affect performance of this Contract, and that entering into this Contract. And Supplier is not prohibited by any contract, or order by any court of competent jurisdiction from entering into this Contract.

E. Supplier's Past Experience

Supplier warrants that the Services have been successfully performed for a non-related third-party without significant problems due to the Services or Supplier.

7. SERVICES

A. Nature of Services and Engagement

Supplier is an independent contractor engaged to perform certain Services, including but not limited to installation and/or support activities as described in Exhibit A, "Pricing", and Exhibit B, "Service Requirements", each attached to this Contract and incorporated by reference. VITA reserves the right to order any of Supplier's Services at any time during the Term of this Contract, but neither VITA nor any Services Recipient is under any obligation to purchase any of Supplier's Services. This Contract is non-exclusive and VITA and all Services Recipients may, at their sole discretion, receive benefits from third party suppliers of services similar to, or in competition with, the Services provided by Supplier.

B. Availability of Supplier's Services

Supplier shall continue to offer all Services and service components identified in Exhibit A, "Pricing" and Exhibit B, "Service Requirements" without exception, for the entire Term of the Contract, including extension years and any period of Transition Assistance. Violation of this condition may be considered grounds for termination for breach of the Contract.

Supplier will not be obligated to continue using outdated or obsolete technology and Supplier will have the right to substitute updated technology or new services of a substantially equivalent function and at mutually agreed upon substantially comparable prices during the Term of this Contract upon prior written approval of VITA, such approval not to be unreasonably restricted or withheld.

8. RATES, ORDERING, AND COMPENSATION

A. Non-Exclusivity

Supplier agrees that no pricing or service contained in this Contract is based upon "exclusivity" or any required percentage of the Commonwealth's or Authorized User's overall or Service-specific spend or volume.

B. E-rate

Supplier agrees to make available all E-rate Eligible Services as listed and priced herein to any DSP Participant which is an Eligible Entity. Supplier agrees to provide the Services directly to the Eligible Entity, and to bill each Eligible Entity directly. Supplier agrees and understands that the responsibility for collection of all charges incurred, and the responsibility for resolving all Service problems as well as administration of this Contract for E-rate participation shall be the sole responsibility of Supplier.

If Supplier is qualified under applicable Federal Communications Commission and Virginia State Corporation Commission rules to apply for and receive Universal Service Fund allocations/disbursements as of the Effective Date, Supplier agrees to maintain these qualifications throughout the Term of the Contract and to assist Eligible Entities in applying for and receiving these allocations/disbursements for services provided pursuant to this Contract.

C. Direct Service Plan (DSP)

Only VITA may, at its sole discretion, qualify and grant to one or more Commonwealth public bodies the authority to participate in the DSP. VITA will notify Supplier in writing of the qualified DSP Participants and their designated ordering officers. DSP Participants shall have the right to place orders to Supplier pursuant to this Contract and shall be billed directly by Supplier. If VITA grants a DSP Participant other than full access to all Contract Service types, VITA shall so notify Supplier.

As a condition for granting authority to a public body to participate in the DSP, each participating public body agrees to allow Supplier to release Customer Proprietary Network Information, as defined by the Federal Communications Commission, related to Services provided under this Contract to VITA. Such CPNI shall be provided by Supplier to VITA for the administration of this Contract. The DSP Participant or VITA shall provide documentation of the DSP Participant's release of CPNI information upon request.

The Parties agree and understand that the responsibility for collection of all charges incurred, and the responsibility for resolving all Product and Service problems as well as administration of a DSP order shall be the sole responsibility of Supplier and the DSP Participant.

Should VITA partially or entirely revoke or otherwise suspend any public body's participation in the DSP, the suspension or termination of ordering privileges will be considered effective upon written notice to Supplier and the affected public body. Direct billing for Services may continue unless otherwise revoked. VITA will give Supplier sixty (60) days advance written notice of any complete suspension or termination of DSP participation. During this period, VITA and Supplier will take appropriate action to transfer ordering and billing functions back to VITA.

Should VITA at any time cancel the DSP, with respect to this Contract, in whole or in part, VITA will provide Supplier sixty (60) days advance written notice of such cancellation, and VITA and Supplier will take appropriate action to transfer ordering and/or billing functions back to VITA.

D. Telecommunications Work Orders

VITA shall have the exclusive authority to order all Services. To order Services VITA will issue a written TWO to the Supplier for any Service(s) provided pursuant to this Contract. A valid TWO should:

- i). Reference this Contract number; Verification that the TWO is technically correct;
- ii). Be signed by an ordering officer authorized to contractually bind the Commonwealth; and
- iii). Identify the Service(s) to be acquired, the price for each Service (in accordance with this contract, including Exhibit A), the required commencement date for each Service, and, as applicable, the location(s) where each Service is to be performed.

In no event shall a TWO include a request for any service not identified in this Contract.

Upon receipt of a written TWO, the Supplier shall process such TWO and return a service order containing the following information in no more than two (2) business days or other timeframe as provided in Exhibit B:

- iv). Verification that the TWO is technically correct;
- v). Date Services will commence;
- vi). Verification of the charge for each item (Service) to be provided; and
- vii). Other applicable administrative information necessary to deliver the Services requested on the TWO.

VITA's standard TWO template is provided as Exhibit C to this Contract.

E. Ordering Officer(s)

VITA will designate in writing any Ordering Officers with the authority to issue orders for the Services. The Commonwealth will make payment only pursuant to a valid order executed by an Ordering Officer. The authorized Ordering Officers for this Contract are listed in Exhibit E to this Contract, which may change from time to time.

F. Purchase Price and Price Protection

Exhibit A, "Pricing", sets forth all fees and the applicable discounts for the Services provided pursuant to this Contract. VITA, nor any Public Body, will not be required to pay any additional costs in addition to or above those costs provided for in Exhibit A. Supplier may submit to VITA a request for an increase in the fees or a decrease in the discounts. Any request for a change in the fees or discounts must be accompanied by written documentation to VITA demonstrating the additional value reflected by the increase in fee or decrease in discount. VITA may, in its sole discretion, agree to a modification of this Contract to effectuate an increase in fees or decrease in discounts.

In the event that a market change effectuates a price decrease for the Services during the Term of this Contract, Supplier shall pass on to VITA the resultant price decrease to VITA. This decrease will be effective on the date the price decrease is announced to the general public.

At all times during the Term of this Contract, Supplier's prices listed in Exhibit A comply with §§ 56-234 et seq. of the Code. If Supplier fails to comply with the aforereferenced statute, then VITA will have grounds for termination of the Contract or any order issued hereunder for breach. VITA may pursue any remedies available at law or in equity with regard to Supplier's failure to comply.

G. Regulatory Fees and Other Surcharges

All regulatory fees and surcharges the Commonwealth will be obligated to pay are as set forth in Exhibit A, "Pricing" attached to this Contract. The Commonwealth will only be obligated to pay those fees and surcharges as are applicable to the Services ordered. No regulatory charges will be applied retroactively, whether as a result of a change in Supplier's policy or some other event.

H. Service Offerings Update

Supplier may request a contract modification to lower the Price of Contract Services (as shown in Exhibit A, "Pricing" of the Contract) and make changes to the Zip Code coverage areas at any time during the Term of the Contract.

Requests for rate increases may be made during the month of May, to be effective July 1 of any year. Such requests must be accompanied by justification for any increase. Requests for rate increases shall be approved solely by the discretion of VITA.

Supplier may make requests to add additional Technology and Services to the Contract at any time. Any submission for new or additional services must be accompanied by documentation showing the value to VITA of the requested changes. Requests for additional services will be reviewed solely by VITA and may be implemented by modification to the contract solely at the discretion of VITA.

VITA reserves the right to request Contract changes and new service offerings, through the contract modification process, at any time during the Contract Term.

9. INVOICE PROCEDURES

A. Invoice Submission

Supplier shall promptly remit each invoice to the "bill-to" address provided with the order. Supplier shall submit invoices for monthly recurring charges monthly in advance and for usage-based or other miscellaneous charges in arrears. No invoice may include any costs other than those identified in the executed order, and the costs be in accordance with Exhibit A, "Pricing". In addition, all Services provided under this Contract must be billed by the Supplier at the Contract price, regardless of which Services Recipient is benefiting from the Services. Without limiting the foregoing, all shipping costs are the Supplier's responsibility except to the extent such charges are identified in Exhibit A, or as noted in the executed order. Supplier's invoices should identify, at a minimum:

- i). Service type and description, with charges identified at the lowest level of detail (i.e., phone level).
- ii). Applicable order date.
- iii). This Contract number and the applicable order number.
- iv). Supplier's Federal Employer Identification Number ("**FEIN**")

The Parties agree that any terms included on Supplier's invoice shall have no force or effect and will in no way bind VITA or any other Party.

B. Invoice and Payment Terms

All payment obligations under this Contract are subject to the availability of legislative appropriations at the federal, state, or local level, for this purpose. In the event of non-appropriation of funds, irrespective of the source of funds, for the items under this Contract, VITA may terminate this Contract, in whole or in part, or any order, in whole or in part, for those services for which funds have not been appropriated. Written notice will be provided to the Supplier as soon as possible after legislative action is completed.

VITA expects the Supplier to deliver one consolidated monthly invoice to each ordering entity, in a "flat" data format that can be electronically manipulated (e.g. Excel, CSV) for all services ordered by and billable to VITA, or other authorized ordering location pursuant to this Contract. Files should not be submitted in a format that cannot be manipulated (e.g. PDF, or any relational database file). Supplier shall also deliver a hard copy of the monthly invoice for payment remittance. VITA shall not be obligated to pay against an invoice that is not readable or not verifiable. All services shall be in the same billing cycle, and the billing file shall be delivered within 8 business days from the close of the billing cycle.

Supplier is responsible for the accuracy of its billing information. Charges for Services accepted more than ninety (90) days prior to receipt of a valid invoice may not be paid.

If there are any disputed items, VITA shall pay all undisputed charges and promptly notify Supplier in writing of any disputed amount. Supplier shall thereupon review its records, and, if Supplier does not concur with VITA, shall provide VITA with documentation to support the charge within fifteen (15) days of notification of the disputed amount. If such charges remain in dispute, such dispute shall be resolved in accordance with the Dispute Resolution section of this Contract. In the absence of the Supplier's written evidence identifying the merit of the disputed amounts, VITA may not pay the disputed amounts and may consider the matter concerning the specific identified amounts closed.

C. Disputed Charges

If, before payment of an invoice, VITA notifies the Supplier in writing of a disputed charge, VITA will have the right to withhold payment of the disputed amount until the dispute is settled or finally resolved. Supplier shall respond in writing to VITA's notification of a disputed charge acknowledging Supplier's receipt of the dispute within five (5) business days. Any charges disputed by VITA will be resolved (whether by credit or explanation of the charge to VITA's satisfaction) in VITA's required format within two (2) billing cycles (60 calendar days) following VITA's written notification. In the absence of the Supplier's written evidence identifying the merit of the disputed amounts, VITA will not be obligated to pay the disputed amounts and may consider the matter concerning the specific identified amounts closed. VITA will not pay any

disputed amounts that remain unresolved after 120 calendar days. If a disputed charge is reversed, Supplier shall reverse all associated surcharges, regulatory charges and taxes.

Any Supplier initiated dispute of charges or payments must be made to in writing, via eMail, to Reconciliation@vita.virginia.gov.

D. Overpayment

If VITA notifies the Supplier in writing of a disputed charge, any credit(s) issued to VITA will include all associated surcharges, regulatory charges and taxes.

If VITA has overpaid the Supplier because of a billing error, the time within which VITA may seek credits for overcharges (including associated surcharges, regulatory charges and taxes) will be governed by applicable law.

10. SUPPLIER PERFORMANCE REPORTING

Supplier will provide management reporting related to service performance. Reporting will conform to the template and requirements in Exhibit F, Quarterly Performance Report. Supplier shall be responsible for submitting the report every quarter to: scminfo@vita.virginia.gov within fifteen days of the end of the quarter. The first report is due the fifteenth day of the fourth month after contract execution, and will cover the previous three-month service period. If there were no outages for the reporting period it should be indicated on the report.

11. MONTHLY REPORTING

Supplier shall submit to VITA a monthly report containing data on:

- i. Amount of Realized Sales; and
- ii. Small Business Procurement and Subcontracting Spend

This report must be submitted in accordance with the instructions and further detailed requirements, and on the templates set forth on the "Supplier Reporting" webpage located at the following URL: <https://www.vita.virginia.gov/supply-chain/supplier-reporting/>, or any successor URL(s). Supplier is encouraged to review the site periodically for updates on Supplier reporting requirements and methods. Supplier's failure to comply with all reporting, payment, and other requirements in this section may be deemed by VITA, in its sole discretion, to be a breach of the Contract. Supplier shall submit to VITA the following monthly reports:

A. Amount of Realized Sales

Supplier shall submit to VITA a monthly report of all Realized Sales under this Contract.

In connection to the monthly report of Realized Sales, Supplier shall pay to VITA the following monthly fees in accordance with instructions described on the "Supplier Reporting" webpage located at: <https://www.vita.virginia.gov/supply-chain/supplier-reporting/>. The monthly report of Realized Sales must include these fees and percentages:

- IFA: 2% of monthly sales

B. Small Business Procurement and Subcontracting Spend

Supplier shall provide to VITA a report of monthly subcontracting spend data. This data must include Supplier's total spend to all Subcontractors who provide direct performance for obligations under this Contract. Supplier's monthly subcontracting spend data must be submitted via the SRS webpage located at: <http://vita2.virginia.gov/procurement/srs/>.

In addition, every six (6) months following the Effective Date, Supplier shall submit to VITA a "SWaM Subcontracting Certification of Compliance" ("SSCC") certifying that Supplier has fully complied with the Contract's Supplier Procurement and Subcontracting Plan ("Plan"). A copy of Supplier's Plan is attached to this Contract as Exhibit G, and is incorporated by reference. The SSCC must include a written explanation of any variances of greater than 20% between the Plan and the actual subcontractor spend by Supplier. Supplier's SSCC will be maintained by VITA in the Supplier's procurement file. Supplier must submit the SSCC to the following address: SCMInfo@vita.virginia.gov. In the event that Supplier fails to comply with its contractually obligated Plan spend or fails to report its contractually obligated Plan spend, VITA may, at its sole discretion, prohibit or delay any renewals or extensions of the Contract, withhold any final

payments due, or both. Supplier's failure to comply will be considered in the prospective award of any future contracts with Supplier.

12. CONFIDENTIALITY

A. Treatment and Protection

Each Party shall:

- i). hold in strict confidence all Confidential Information of any other Party;
- 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 the other Party's Confidential Information to any third-party.

A Services Recipient may, however, disclose the Confidential Information as delivered by Supplier to Agents of the Services Recipient that are bound by non-disclosure agreements with the Services Recipient. Each Party shall take the same measures to protect against the disclosure or misuse of the Confidential Information as it takes to protect its own proprietary or confidential information, but in no event will such measures be less than reasonable care.

Supplier agrees that all information that relates to the quantity, technical configuration, type, destination, location and amount of use of a Service under the Contract obtained by Supplier as a result of providing service pursuant to this Contract will be considered confidential to VITA and the Services Recipient and not to Supplier. This includes all information included in reports and other deliverables prepared by Supplier.

B. Exclusions

The term "Confidential Information" does 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) or similar laws or pursuant to a court order.

C. Return or Destruction

Upon the termination or expiration of this Contract or upon the earlier request of the disclosing Service Recipient, Supplier shall, at its own expense:

- i). promptly return all tangible Confidential Information (and all copies thereof except the record required by law) to the disclosing Service Recipient; or
- ii). upon written request from the disclosing Service Recipient destroy the Confidential Information in Supplier's possession or control, and provide the disclosing Service Recipient with written certification of the destruction.

Additionally, Supplier shall immediately cease all further use of the Service Recipient's Confidential Information, whether in tangible or intangible form.

Authorized Users shall retain and dispose of Supplier's Confidential Information in accordance with the Commonwealth's records retention policies or, if Service Recipient is not subject to such policies, in accordance with Service Recipient's own records retention policies.

D. Confidentiality Statement

All Supplier Personnel performing services pursuant to this Contract may be required to sign a confidentiality statement or non-disclosure agreement. Any violation of such statement or agreement shall be deemed a breach of this Contract.

E. Freedom of Information Act Acknowledgement

All Supplier documents now or later comprising the Contract may be released in their entirety under the Virginia Freedom of Information Act, and Supplier agrees that any confidentiality or

similar stamps or legends that are attached to any future documents or information may be ignored to the extent they claim confidentiality beyond that permitted by the Virginia Freedom of Information Act.

13. INDEMNIFICATION

A. Indemnification Generally

Supplier shall defend, indemnify, and hold harmless all Commonwealth Indemnified Parties from and against any third-party Claims to the extent the Claims in any way relate to, arise out of, or result from:

- i. any negligent act, negligent omission, or intentional or willful conduct of Supplier or any Supplier Personnel;
- ii. a breach of any representation, warranty, covenant, or obligation of Supplier contained in this Contract;
- iii. any defect in the Supplier-provided products or services; or
- iv. any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Supplier-provided products or services.

B. Defense of Claims

Commonwealth Indemnified Parties. Selection and approval of counsel, and approval of any settlement, shall be accomplished in accordance with all applicable laws, rules, and regulations. For state agencies, the applicable laws include §§ 2.2-510 and 2.2-514 of the Code.

C. Duty to Replace or Reimburse

In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Supplier-provided products or services, or Supplier's performance, Supplier shall, at its expense and option, either (a) procure the right to continue use of such infringing products or services, or any components thereof, or (b) replace or modify the infringing products or services, or any components thereof, with non-infringing products or services satisfactory to VITA.

In the event that an Authorized User cannot use the affected Deliverable, Product, Licensed Services, or Services, including any Components, then Supplier shall reimburse such Authorized User for the reasonable costs incurred by such Authorized User in obtaining an alternative product or service.

D. Supplier Dispute of Obligation to Indemnify

If a Claim is commenced against any Commonwealth Indemnified Parties by a third party alleging an infringement of the third party's intellectual property rights and Supplier is of the opinion that the allegations in the third-party Claim, in whole or in part, are not covered by the indemnification provision in this Contract, then in the event that Supplier disputes any of its obligations to defend or indemnify any Commonwealth Indemnified Party, then Supplier shall immediately notify VITA and the affected Authorized User(s) in writing and shall, nonetheless, take all reasonable steps to protect the rights, remedies, and interests of the Commonwealth Indemnified Parties in the defense of the Claim, including to secure a continuance to permit VITA and the affected Authorized User(s) to appear and defend their interests in cooperation with Supplier as is appropriate, including any jurisdictional defenses VITA or the affected Authorized User(s) may have.

14. LIABILITY

A. Supplier Liability

Except for liability arising from any combination of:

- i. any intentional or willful misconduct, fraud, or recklessness of Supplier or any Supplier Personnel; or
- ii. any act or omission of Supplier or any Supplier Personnel that results in Claims for bodily injury, including death, and damage to real property or tangible property resulting from the negligence of a Supplier or any Supplier Personnel,

Supplier's indemnification obligations and liability shall not exceed, in aggregate, twice the value of the Contract. This limitation will apply on a per-incident basis; it being understood that multiple losses stemming from the same root cause constitute a single incident.

B. Limitation of Liability

Supplier will be liable for damages caused by its employees, agents, or subcontractors. Except for liability arising out of a Party's negligence or willful misconduct, neither Party will be liable to the other Party for any indirect, incidental, consequential, or punitive damages, including (without limitation) loss of profit, income, or savings, even if advised of the possibility of these damages.

15. SECURITY COMPLIANCE

Supplier shall comply with all provisions of the then-current Commonwealth security procedures, published by VITA and which may be found at: <https://www.vita.virginia.gov/it-governance/itrm-policies-standards/>, or any successor URL(s), as are pertinent to Supplier's operation. Further, Supplier shall comply with all provisions of the relevant Subscriber's then-current security procedures as are pertinent to Supplier's operation and that have been provided to Supplier by the Subscriber. Supplier shall also comply with all applicable federal, state, and local laws and regulations. Any unauthorized release of proprietary or Personal information by the Supplier or any employee, agent or subcontractor of Supplier shall constitute a breach of its obligations under this Section and the Contract.

Any unauthorized release of any Confidential Information, or Commonwealth proprietary or personal information, by the Supplier or Supplier Personnel constitutes a breach of Supplier's obligations under the Contract. Supplier shall notify VITA and any affected Authorized User within 24 hours of discovery of, or when Supplier should have discovered, any breach of "unencrypted" and "unredacted" personal information, as those terms are defined in Code § 18.2-186.6, and other confidential or personal identifying information provided to the Supplier by VITA or an Authorized User. To the extent permitted by law, Supplier shall provide VITA and any affected Authorized User the opportunity to participate in the investigation of the breach and to exercise control over reporting the unauthorized disclosure.

Supplier shall ensure performance of an audit of Supplier's environment at least annually to provide assurance of "Controls Relevant to Security, Availability, Processing Integrity, Confidentiality or Privacy" in accordance with the then-current standards set forth by the American Institute of CPAs.

16. BANKRUPTCY

If Supplier becomes insolvent, takes any step leading to its cessation as a going concern, fails to pay its debts as they become due, or ceases business operations continuously for longer than 15 business days, then VITA may immediately terminate this Contract or any order issued pursuant to this Contract on notice to Supplier unless Supplier immediately gives VITA adequate assurance of the future performance of this Contract or the applicable order. If bankruptcy proceedings are commenced with respect to Supplier, and if this Contract has not otherwise terminated, then VITA may suspend all further performance of this Contract until Supplier assumes this Contract and provides adequate assurance of performance thereof or rejects this Contract pursuant to Section 365 of the Bankruptcy Code or any similar or successor provision, it being agreed by the VITA and Supplier that this is an executory contract. Any suspension of further performance by VITA pending Supplier's assumption or rejection will not be a breach of this Contract, and will not affect VITA's right to pursue or enforce any of its rights under this Contract or otherwise.

17. IMPORT/EXPORT

Supplier shall comply with all data export laws and regulations. In addition, VITA policy requires that any data deemed "restricted" or "sensitive" by either federal or state authorities, may only be collected, developed, analyzed, or otherwise used or obtained by persons or entities working within the boundaries of the United States.

18. GENERAL PROVISIONS

A. Relationship Between VITA, Services Recipients and Supplier

Supplier has no authority to contract, bind or commit VITA or any Services Recipient to any agreement of any kind, or to assume any liabilities of any nature in the name of or on behalf of VITA or any Services Recipient. Under no circumstances will Supplier, or any of its Supplier

Personnel, hold itself out as or be considered an agent or an employee of VITA or any Services Recipient, and neither VITA nor any Services Recipient will have any duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or its Supplier Personnel. Supplier represents and warrants that it is an independent contractor for purposes of federal, state and local employment taxes and agrees that neither VITA nor any Services Recipient is responsible to collect or withhold any federal, state or local employment taxes, including, but not limited to, income tax withholding and social security contributions, for Supplier. Supplier shall pay or withhold any and all taxes, interest or penalties (including, but not limited to, any federal, state or local withholding or employment taxes, and any penalties related to health care or employee benefits laws) that are imposed, assessed or levied as a result of this Contract or Services performed pursuant to this Contract. Supplier shall reimburse VITA or any Authorized User in the event that any such taxes, interest or penalties are assessed against and paid by VITA or any Services Recipient.

B. Licensing Within the Commonwealth

Any and all licenses granted or provided pursuant to this Contract, whether to System Software, COTS, or any other Software will be held by:

- i). the Commonwealth, if the Services Recipient is an agency as defined by Code § [2.2-2006](#) or a legislative, judicial and independent agency of the Commonwealth, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code;
- ii). the applicable public body, if the Services Recipient is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity; or
- iii). the applicable private institution of higher education, if the Authorized User is a private institution of higher education listed at: <http://www.cicv.org/Our-Colleges/Profiles.aspx>.

C. Licenses and Permits

Supplier shall be responsible for obtaining all rights-of-way, licenses, and/or permits required by applicable authorities in order to perform installation Services at the location(s) specified on any order issued pursuant to this Contract.

D. Incorporated Contractual Provisions

In addition to the terms, conditions, and obligations of this Contract, Supplier agrees to the VITA "Mandatory Contract Terms" which consist of the VITA:

- "Core Contractual Terms";
- "Required eVA Terms and Conditions" as set forth in Code § [2.2-4363](#); and
- "Mandatory Internal Revenue Service (IRS) Publication 1075 (required for FTI data only)"

Each of these Mandatory Contract Terms are set forth at the following URL and incorporated into this Contract by reference: <https://www.vita.virginia.gov/supply-chain/scm-policies-forms/mandatory-contract-terms/>.

Supplier agrees that non-compliance with the above-referenced Mandatory Contract Terms and IRS Publication 1075 may be deemed, solely by VITA, as a material breach of the applicable order or SOW or of the Contract. Supplier is responsible for verifying the correct and current version of this IRS publication and related safeguarding terms language and acknowledges that any Authorized User issuing the order or SOW will be held harmless.

The terms and conditions set forth in documents posted at the URL above, and any successor URL(s), are subject to change pursuant to action by the legislature of the Commonwealth, change in VITA policy, adoption of revised eVA business requirements, or change to IRS Publication 1075. If a change is made to any of the Mandatory Contract Terms documents, a new effective date will be noted in the applicable document title. Supplier is advised to check the URLs, or their successors, periodically.

E. Compliance with the Federal Lobbying Act

Supplier shall not, in connection with this Contract, engage in any activity prohibited by 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"), and shall promptly perform all obligations mandated by the Lobbying Act in

connection with this Contract, including, without limitation, obtaining and delivering to the Commonwealth all necessary certifications and disclosures.

Supplier is hereby advised that a significant percentage of the funds used to pay Supplier's invoices under this Contract may be federal funds. Under no circumstances shall any provision of this Contract be construed as requiring or requesting the Supplier to influence or attempt to influence any person identified in 31 USC 1352(a)(1) in any matter.

Supplier's signed certification of compliance with the foregoing is incorporated as Exhibit D attached to this Contract and incorporated by reference.

F. Ethics in Public Contracting

By signing this Contract, Supplier warrants that its assent to this Contract is made without collusion or fraud, and that Supplier has not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with its proposal or the terms of this Contract. Further, Supplier warrants that it has not conferred any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised on any public employee having official responsibility for this procurement transaction, unless consideration of substantially equal or greater value was exchanged. In addition, Supplier warrants that it shall notify VITA if it becomes aware of a potential conflict of interest in the future.

G. Governing Law

This Contract 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 circuit courts of the Commonwealth of Virginia. The English language version of this Contract prevails when interpreting this Contract. The United Nations Convention on Contracts for the International Sale of Goods and all other laws and international treaties or conventions relating to the sale of goods are expressly disclaimed. UCITA shall apply to this Contract only to the extent required by Code § 59.1-501.15.

H. Dispute Resolution

In accordance with Code § 2.2-4363, contractual claims, whether for money or other relief, must be submitted in writing to the public body from whom the relief is sought no later than 60 calendar days after final payment; however, written notice of the Supplier's intention to file such claim must be given to such public body at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims will not delay payment of amounts agreed due in the final payment. The relevant public body shall render a final decision in writing within 30 calendar days after its receipt of the Supplier's written claim.

The Supplier may not invoke any available administrative procedure under the Code nor institute legal action prior to receipt of the decision of the relevant public body on the claim, unless that public body fails to render its decision within 30 calendar days. The decision of the relevant public body will be final and conclusive unless the Supplier, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Code § 2.2-4364 or the administrative procedure authorized by Code § 2.2-4365.

Upon request from the public body from whom the relief is sought, Supplier will submit any and all contractual disputes arising from this Contract to the public body's alternative dispute resolution ("ADR") procedures, if any. Supplier may invoke such public body's ADR procedures, if any, at any time and concurrently with any other statutory remedies prescribed by the Code.

In the event of any breach by a public body or a private institution, Supplier's remedies will be limited to claims for damages and interest allowable under the Code and, if available and warranted, equitable relief. All such claims to be processed pursuant to this Section. In no event will Supplier's remedies include the right to terminate any license or support services hereunder.

I. Assignment

This Contract is binding upon and will inure to the benefit of the permitted successors and assigns of VITA and Supplier. Supplier may not assign, subcontract, delegate or otherwise convey this Contract or any of its rights and obligations under this Contract, to any entity without the prior written consent of VITA, and any attempted assignment or subcontracting without consent will be void. VITA may assign this Contract to any entity, so long as the assignee agrees in writing to be bound by the all the terms and conditions of this Contract.

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

J. Severability

Invalidity of any term of this Contract, in whole or in part, will not affect the validity of any other term. VITA and Supplier further agree that in the event such provision is an essential part of this Contract, they shall immediately begin negotiations for a suitable replacement provision.

K. Survival

Any provisions of this Contract regarding Software License, Rights To Work Product, Warranty, Escrow, Confidentiality, Content Privacy and Security, Liability, Indemnification, Transition of Services, the right to purchase Maintenance Services, and the General Provisions survive the expiration or termination of this Contract.

L. Force Majeure

No Party will be responsible for the delay or failure to meet its obligations under this Contract if the delay or failure arises from causes beyond the reasonable control and without the fault or negligence of the obligated Party. If any performance date under this Contract is postponed or extended pursuant to this Section for longer than 30 calendar days, VITA, by written notice given during the postponement or extension, may terminate Supplier's right to render further performance after the effective date of termination without liability for that termination, and in addition an Authorized User may terminate any order or SOW affected by such postponement or delay.

M. No Waiver

Any failure to enforce any terms of this Contract will not constitute a waiver.

N. Remedies

The remedies set forth in this Contract are intended to be cumulative. In addition to any specific remedy, VITA, all Commonwealth public bodies and all other Services Recipients reserve any and all other remedies that may be available at law or in equity.

O. Right to Audit

VITA reserves the right to audit those Supplier records that relate to the Services rendered or the amounts due Supplier for such Services under this Contract. VITA's right to audit is limited as follows:

- i). Three (3) years from Service performance date;
- ii). At VITA's expense;
- iii). No more than once every 12 month period;
- iv). Performed at Supplier's premises, during normal business hours at mutually agreed upon times; and
- v). Excludes access to Supplier cost information.

The Supplier will not have the right to audit, or require to have audited, VITA or any public body.

P. Taxes

The Commonwealth is exempt from Federal excise and all State and Local taxes and any such taxes may not be included in Contract prices. Tax certificates of exemption, Form ST-12 can be obtained from Authorized Users upon request. Deliveries against this Contract shall be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K. The Commonwealth is also exempt from paying E-911 charges.

Q. Currency

All prices, costs, or fees in this Contract and all exhibits, schedules, orders, or SOWs will be in United States dollars.

R. Advertising and Use of Proprietary Marks

No Party may use the name of the other Party or refer to the other Party, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of the other

Party. In no event may any Party use a proprietary mark of the other Party without receiving the prior written consent of the other Party

S. Most Favored Customer

Supplier warrants that the prices under this Agreement are equal to or less than prices offered by Supplier to other government customer(s), in the Commonwealth of Virginia, contracting for similar contract volumes and service offerings, under comparable terms and conditions. The Supplier agrees to make any new and related service available for inclusion in this contract at the same time it is offered to other Virginia governmental agencies or entities eligible to purchase from this contract by the Code of Virginia as defined in Section 1 (Purpose and Scope). Offering lower prices for contract services, to an entity eligible to purchase from the VITA contract, constitutes a contract price decrease and the Supplier shall immediately notify VITA of the now lower contract price.

T. Notices

Any notice required or permitted to be given under this Contract must be in writing and will be deemed to have been sufficiently given if delivered in person, or if deposited in the U.S. mails, postage prepaid, for mailing by registered, certified mail, or overnight courier service addressed to:

- i). To VITA and to Supplier, if Supplier is incorporated in the Commonwealth of Virginia, to the addresses shown below.
- ii). To Supplier, if Supplier is incorporated outside the Commonwealth of Virginia, to the Registered Agent registered with the Virginia State Corporation Commission.

Pursuant to Title 13.1 of the Code, VITA or Supplier may change its address for notice purposes by giving the other Party notice of such change in accordance with this Section.

Administrative contract renewals, modifications or non-claim related notices are excluded from the above requirement. Such written and/or executed contract administration actions may be processed by the assigned VITA and Supplier points of contact for this Contract and may be given in person, via U.S. mail, courier service or electronically.

Supplier Address for Notice:

IP Access International
31831 Camino Capistrano #300A
San Juan Capistrano, CA 92677

Attention: Alan Rich, President

VITA Address for Notice:

Virginia Information Technologies Agency
11751 Meadowville Lane
Chester, VA 23836

Attention: Contract Administrator (SCM)

U. Contract Administration and Account Management

Supplier agrees that at all times during the Term of this Contract an account executive, at Supplier's senior management level, will be assigned and available to VITA. Supplier reserves the right to change such account executive upon reasonable advance written notice to VITA.

V. Captions

The captions of sections and subsections are for convenience and in no way define, limit, or enlarge the scope of this Contract or any of its sections.

W. Entire Contract

The following documents, including all subparts thereof, are attached to this Contract and are made a part of this Contract for all purposes:

- i). Exhibit A Pricing
- ii). Exhibit B Service Requirements
- iii). Exhibit C Telecommunications Work Order (TWO) Example
- iv). Exhibit D Certification Regarding Lobbying
- v). Exhibit E Individuals Authorized to Order Services (VITA Ordering Officers)
- vi). Exhibit F Quarterly Performance Report
- vii). Exhibit G Supplier Procurement and Subcontracting Plan

This Contract, all its Exhibits, and any prior non-disclosure agreement constitute the entire agreement between VITA and Supplier, and supersede any and all previous representations, understandings, discussions or agreements between VITA and Supplier as to the subject matter hereof. Any and all terms and conditions contained in, incorporated into, referenced by or provided with the Supplier's bid shall be deemed invalid. The provisions of the Virginia Department of General Services, Division of Purchases and Supply Vendor's Manual do not apply to this Contract or any order or TWO issued hereunder. This Contract may only be amended by an instrument in writing signed by VITA and Supplier.

X. Order of Precedence

In the event of a conflict, the following order of precedence shall apply: this Contract document, any signed Contract Modifications, Exhibit B, Exhibit A, then any specific order. In the event of a conflict or inconsistency between the negotiated terms of this Contract and any provision incorporated by reference into the Contract (e.g., a section of a Service Requirements), the negotiated terms of this Contract will take precedence. For purposes of this section, a "conflict" exists with respect to a subject that has been comprehensively addressed in the Contract when supplementary terms contained in a provision incorporated by reference would alter the rights and obligations of the Parties set forth in the Contract.

Y. Counterparts and Electronic Signatures

This Contract may be executed in multiple counterparts, each of which, when assembled to include an original signature for each Party to this Contract, will constitute a complete and fully executed original. All fully executed original counterparts will collectively constitute a single agreement. Signatures transmitted by fax or electronic mail (in portable data format ("**PDF**")) are also permitted as binding signatures to this Contract.

Z. Opportunity to Review

VITA and Supplier each acknowledge that it has had the opportunity to review this Contract and to obtain appropriate legal review if it so chose.

[SIGNATURE PAGE(S) TO FOLLOW]

Signed by the undersigned authorized representatives of VITA and Supplier and effective as of the Effective Date set forth in the preamble of this Contract above.

Supplier

VITA, on behalf of the
COMMONWEALTH OF VIRGINIA

By: 

(Signature)

Name: Alan Rich

(Print)

Title: President

Date: 1/13/2020

By: 

(Signature)

Name: Nelson P. Moe

(Print)

Title: Chief Information Officer

Date: 02/18/2020