

**COMPREHENSIVE
INFRASTRUCTURE AGREEMENT**

BY AND BETWEEN

THE COMMONWEALTH OF VIRGINIA

AND

[VENDOR]

DETAILED PACKAGE DRAFT

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COMPREHENSIVE INFRASTRUCTURE AGREEMENT

This Comprehensive Infrastructure Agreement, dated as of [REDACTED], 2005, is a contract by and between the Commonwealth of Virginia (the "Commonwealth") acting through the Virginia Information Technologies Agency ("VITA"), and [REDACTED] ("Vendor"), a [REDACTED] corporation], having a principal place of business at [REDACTED], under which Vendor shall provide the Commonwealth with certain IT services on the terms and conditions set forth below.

For and in consideration of the mutual promises and covenants contained herein, the receipt, sufficiency, and adequacy of which are hereby acknowledged, the Parties, intending to be legally bound, hereby contract and agree as follows:

1. BACKGROUND AND PURPOSE

1.1 The Commonwealth's Objectives

The Commonwealth has undertaken a comprehensive IT infrastructure transformation initiative, the primary goal of which is to significantly improve the Commonwealth's IT systems and the manner in which such systems are operated, supported, and maintained. The Commonwealth therefore desires to engage a service-provider to provide a broad range of IT goods and services related to the ongoing operation, support, and maintenance of the Commonwealth's IT systems and infrastructure, as well as certain transitional services whereby Vendor shall assume responsibility for such IT goods and services from the Commonwealth and its current third-party service-providers. Vendor acknowledges and agrees that the Commonwealth has entered into this Agreement in order to achieve the general objectives identified above in this Section and the following:

- (i) Integrate and manage the IT infrastructure of all executive branch agencies;
- (ii) Implement a secure Intranet encompassing in-scope agencies;
- (iii) Establish a state-of-the-art data center and back-up facility;
- (iv) Consolidate agency servers in their most cost-effective locations;
- (v) Implement a desktop management program for all in-scope agencies;
- (vi) Establish a unified statewide electronic mail services;
- (vii) Provide a statewide customer care center;
- (viii) Employ innovative procurements, supplier partnerships, and financing arrangements to fund, expedite, and ensure the performance of future initiatives;

- (ix) Introduce innovative technology solutions supporting redefined, improved agency mission-critical citizen service programs;
- (x) Improve major IT project success rates to best-in-class levels; and
- (xi) Achieve significant annual return on investments.

The Parties agree that ambiguous or unclear terms are to be construed in a manner consistent with these objectives.

1.2 Proposals

Vendor has represented that it is a competent, qualified, experienced provider of IT and transitional goods and services of the types required by the Commonwealth, has advised the Commonwealth that it could fulfill and fully satisfy the Commonwealth's requirements for such services, and has set forth details of how it would do so, in its proposal dated [_____, 200_], and certain other related documents, attached hereto as Schedule 1.2 (collectively, the "Proposals").

1.3 Engagement

In reliance upon such representations of Vendor and the Proposals, as described in Section 1.2, and in furtherance of the purposes for which the Proposals were submitted, the Commonwealth hereby engages Vendor to perform all of the Services and other obligations of Vendor that are described in this Agreement, and Vendor hereby accepts such engagement, upon the terms and conditions set forth herein. Vendor shall be the prime contractor and, subject to the terms and conditions hereof, hereby assumes full and total responsibility for obtaining and providing all Software, hardware, documentation, services, and other equipment and resources (other than those resources expressly identified herein as resources to be supplied by the Commonwealth) necessary and appropriate for it to perform the Services and to provide the Deliverables, in accordance with this Agreement. In performing such Services and providing such Deliverables, Vendor shall be subject to the exercise of the Commonwealth's management and oversight functions and prerogatives, and the Commonwealth's retained responsibilities, as described in this Agreement.

1.4 Approval by the Commonwealth

From the date that Vendor executes this Agreement (the "Signing Date") until such time as the Commonwealth executes this Agreement (the "Effective Date"), this Agreement constitutes the irrevocable, firm offer by Vendor to provide the Services to the Commonwealth for the Fees, in accordance herewith.. This Agreement shall not be binding or of any legal force or effect on the Commonwealth until the authorized execution of this Agreement by the Commonwealth. Notwithstanding the foregoing, from the Signing Date until such time as the Commonwealth executes this Agreement, Vendor shall actively continue planning and working with the Commonwealth to ensure the timely completion of all tasks necessary and sufficient to prepare for and achieve a smooth and seamless transition of the IT services related to the

ongoing operation, support, and maintenance of the Commonwealth's IT infrastructure from the Commonwealth and its current third party service-providers to Vendor.

2. TRANSITION OF RESOURCES

[NOTE TO VENDORS: The language contained in this Agreement currently contemplates a situation wherein Vendor is purchasing certain Commonwealth assets on or about the Service Commencement Date. In addition to responding to the Agreement as drafted, Vendor is requested to separately and alternatively detail those aspects of its proposal, including any affected pricing terms, that would change or differ in the event that the Commonwealth retained ownership of such assets until technology refresh.]

2.1 Transition of Purchased Assets

2.1.1. Identification

On the Service Commencement Date, the Commonwealth shall sell to Vendor, and Vendor shall buy from the Commonwealth, "AS IS, WHERE IS," all of the Commonwealth's right, title, and interest in each of the Purchased Assets. Within thirty (30) days after the Service Commencement Date Vendor shall identify, and develop and provide to the Commonwealth a complete written list of, all of the items that constitute Purchased Assets. The Commonwealth shall cooperate with Vendor and provide such access, data, and information as are reasonably available and requested to assist with such identification. Vendor shall promptly report and return to the Commonwealth any items of an unusual nature or extraordinary value that are discovered within the Locations and that would not constitute Purchased Assets. If the Parties are unable to agree upon which items constitute Purchased Assets within thirty (30) days after the expiration of such thirty (30) day period, the matter shall be handled in accordance with the dispute-resolution process set forth in Section 24.

2.1.2. Estimated Purchase Price

The estimated purchase price for the Purchased Assets is [_____] Dollars ([extract_itex>_____]) (the "Estimated Purchase Price"), which amount shall be due and payable by Vendor to the Commonwealth in cash on the Service Commencement Date. The Estimated Purchase Price shall be set forth on a preliminary Bill of Sale executed by the Parties, the form of which Bill of Sale is attached hereto as Exhibit 2.1.2.

2.1.3. Determination of Book Value

Within sixty (60) days after the later of: (i) the date that the Commonwealth receives from Vendor the list of Purchased Assets, as described in Section 2.1.1, or (ii) the resolution of a dispute as to which items constitute Purchased Assets, the Commonwealth shall determine the aggregate net book value ("Book Value") of the Purchased Assets as of the Service Commencement Date, as shown or reflected on the books and records of the Commonwealth, and shall notify Vendor in writing of such Book Value. Vendor shall have thirty (30) days after receipt of such written notice from the Commonwealth to inspect and

examine such portions of the books and records of the Commonwealth as pertain to the ascertainment of the Book Value of the Purchased Assets in order to verify the accuracy of the Book Value, as determined by the Commonwealth. In no event shall a disagreement by Vendor with regard to the particular method of depreciation chosen by the Commonwealth to apply to any of the Purchased Assets, as shown or reflected in the Commonwealth's books and records, constitute a valid ground for Vendor to contest or dispute the accuracy of the Book Value. If Vendor fails to exercise such right of inspection and examination, or fails to notify the Commonwealth in writing of any discrepancies within such thirty (30) day period, then Vendor shall be deemed to have accepted and agreed with the Commonwealth's determination of Book Value as of the date of the expiration of such period. If Vendor makes timely exercise and delivers timely notice of discrepancy and the Parties are unable to agree, within an additional thirty (30) days after the expiration of the time period described above for Vendor's inspection and examination, upon the Book Value of any one or more of the Purchased Assets that are claimed by Vendor to have been given an erroneous Book Value by the Commonwealth, the matter shall be handled in accordance with the dispute-resolution process set forth in Section 24. In the event of any such dispute, the Commonwealth shall retain the full amount of the Estimated Purchase Price paid by Vendor until such matter is finally resolved in accordance with such process. For purposes of this Section 2.1.3, Book Value shall include: (i) the net book value of all leasehold improvements with respect to the properties that are the subject of real property leases that are Leases; and (ii) the net book value of all computer software that is installed on Machines, or is included with Machines, at the time of acquisition by the Commonwealth.

2.1.4. Final Purchase Price

Upon final determination of Book Value, in accordance with Section 2.1.3, and if such Book Value is different from the Estimated Purchase Price, the Parties shall execute a restated Bill of Sale that supersedes the initial Bill of Sale and that includes an adjusted list of the Purchased Assets, the items on such adjusted list being deemed to thereby collectively constitute the Purchased Assets. Such restated Bill of Sale shall also set forth a final purchase price that accurately represents the Book Value of such Purchased Assets (the "Final Purchase Price"), as such Book Value shall have been determined by the Parties in accordance with the process set forth above in this Section 2.1. If the Final Purchase Price is less than the Estimated Purchase Price, then the positive difference between such prices shall be due and payable in cash, without interest, by the Commonwealth to Vendor within thirty (30) days after the date on which the Final Purchase Price is determined, in accordance herewith. If the Final Purchase Price is greater than the Estimated Purchase Price, then the Commonwealth shall receive a credit in the amount of the positive difference between such prices, which credit shall be applied as a reduction in the amount owed by the Commonwealth on invoices submitted by Vendor after the date on which the Final Purchase Price is determined, in accordance herewith.

2.2 Leases and Contracts

Subject to Vendor obtaining the applicable Required Consents, the Parties, on the Service Commencement Date, shall enter into assignment and assumption agreements, in the form attached hereto as Exhibit 2.2 (each such agreement, an "Assignment and Assumption Agreement"), pursuant to which the Commonwealth shall assign to Vendor all of the

Commonwealth's rights and obligations under the Leases and Contracts. Vendor shall be responsible for the performance of all obligations of the Commonwealth under the Leases and Contracts, including payment of all related expenses, to be performed with respect to periods on or after the Service Commencement Date. Vendor shall be responsible for paying all relicensing or transfer fees associated with the Leases and Contracts. Vendor shall reimburse the Commonwealth for any prepayments in respect thereof (provided that, all "prepayments", as such term is used in this Agreement, shall be for goods or services of which Vendor receives the benefit after the Service Commencement Date and that will be utilized on or after the Service Commencement Date in connection with the performance of Services by Vendor hereunder, including, for example, prepaid support and maintenance service fees), and Vendor shall indemnify the Commonwealth Indemnitees with respect to all such obligations in respect of such periods. The Commonwealth shall reimburse Vendor for an appropriate proportionate amount of any post-payments made by Vendor under the Contracts (provided that, all "post-payments", as such term is used in this Agreement (for example, with regard to balloon payments), shall be identified by Vendor in writing to the Commonwealth within a reasonable period of time (not to exceed sixty (60) days) after the Service Commencement Date and shall be for goods or services for which the Commonwealth received the benefit of such post-payment prior to the Service Commencement Date and that will be utilized on or after the Service Commencement Date in connection with the performance of the Services to be performed by Vendor hereunder). Vendor shall use all commercially reasonable efforts to obtain from the landlord of each Lease an instrument expressly releasing the Commonwealth from any obligations under such Lease on and after the Service Commencement Date (provided that, in no event shall Vendor be obligated, in the course of seeking such a release, to make any additional payments or undertake any additional bonding or other obligation except as expressed herein), and with respect to each Lease as to which Vendor shall fail to obtain such a release, Vendor shall indemnify the Commonwealth Indemnitees with respect to all such obligations in respect of such periods. The Commonwealth shall be responsible for the performance of all obligations of the Commonwealth under the Leases and Contracts, including payment of all related expenses, to be performed with respect to periods prior to the Service Commencement Date. From time to time, to the extent permitted by the applicable agreement, Vendor may request that the Commonwealth cooperate in the termination of any Leases or Contracts (which cooperation shall not be unreasonably withheld by the Commonwealth), and Vendor shall reimburse the Commonwealth for any termination charges or penalties, if any.

2.3 Licenses

2.3.1. Assignment and Assumption

Subject to Vendor's obtaining the applicable Required Consents and except as provided in Section 2.3.2, the Parties, on or about the Service Commencement Date, shall enter into Assignment and Assumption Agreements, in the form attached hereto as Exhibit 2.2, pursuant to which the Commonwealth shall assign to Vendor all of the Commonwealth's rights under the Licenses. Except as provided in Section 2.3.2: (i) Vendor shall be responsible for paying all relicensing or transfer fees associated with the Licenses; (ii) Vendor shall be responsible for the performance of all obligations of the Commonwealth under

the Licenses, including payment of all related expenses, to be performed with respect to periods on or after the Service Commencement Date; (iii) Vendor shall reimburse the Commonwealth for any prepayments in respect of the Licenses that are assigned to Vendor pursuant to this Section 2.3.1, and shall indemnify the Commonwealth Indemnitees with respect to all such obligations with respect to periods on or after the Service Commencement Date; and (iv) the Commonwealth shall be responsible for the performance of all obligations of the Commonwealth under the Licenses that are assigned to Vendor pursuant to this Section 2.3.1, including payment of all related expenses, to be performed with respect to periods prior to the Service Commencement Date.

2.3.2. Retained Licenses

Vendor shall use commercially reasonable efforts to obtain for Vendor and Vendors Subcontractors, with all necessary or required cooperation and assistance of Vendor and Vendor's Subcontractors, the right to use (but in no event to copy or reverse-engineer) the Software (e.g., operating systems and desktop applications installed on Machines that constitute Purchased Assets) that is the subject of the Retained Licenses, which right shall allow Vendor and Vendor's Subcontractors to use such Software: (i) during the Term; (ii) subject to and in accordance with this Agreement and the applicable Retained License, to the extent that a copy thereof is provided to Vendor; (iii) solely for the purpose of Vendor's performing the Services; and (iv) with regard to any particular copy of such Software, only on the Purchased Asset on which such copy of Such software was installed at the time when Vendor acquired such Purchased Asset from the Commonwealth, and then only for so long as Vendor owns and uses such Purchased Asset solely to provide Services to the Commonwealth under this Agreement. Except with regard to the transfer of any such Purchased Assets back to the Commonwealth in a Disentanglement, Vendor shall remove or erase all copies of all Software that is the subject of any Retained Licenses from each Purchased Asset on which such Software is installed prior to: (i) selling or disposing of, in whatever manner, such Purchased Asset; or (ii) using such Purchased Asset for any purpose other than the provision of the Services to the Commonwealth hereunder. Vendor shall in no event transfer any copy of any such Software to any other Machine, nor shall Vendor be able to copy or reproduce such Software.

2.3.3. Notification

Vendor shall promptly provide the Commonwealth with a certified and detailed report (including specific identification of Software items removed or erased, and serial numbers of Machines from which so removed or erased) when Vendor removes or erases copies of Software subject to the Retained Licenses in preparation for selling or disposing of, or using for purposes other than the provision of Services to the Commonwealth, any Purchased Assets on which any such Software is installed. In addition, Vendor shall supply a report to the Commonwealth during the first month of each Contract Quarter setting forth the number of copies of the Software that is subject to Retained Licenses that were in use by Vendor during the previous Contract Quarter. At least thirty (30) days prior to each date on which any such license fees, or maintenance and support fees, become due and payable by the Commonwealth to the respective licensors or third party service-providers, the Commonwealth shall provide a written invoice to Vendor setting forth the license fees, or maintenance and support fees, applicable to

the copies of the Software that is the subject of Retained Licenses, that was installed on the Purchased Assets when they were acquired from the Commonwealth and, with respect to the applicable time period, the Commonwealth has not been notified by Vendor that such copies have been removed or erased, which license fees, or maintenance and support fees, shall be determined on a proportionate basis in comparison to the total number of copies for which the Commonwealth is licensed, after appropriate adjustment to reflect any prepayments or post-payments, in accordance with Section 2.2. Vendor shall pay the Commonwealth, in cash, the total amount of such license fees, or maintenance or support fees, set forth on each such invoice within thirty (30) days after receipt thereof, or, in the Commonwealth's sole discretion, Vendor shall grant the Commonwealth a credit in the amount of such license fees toward the Fees set forth on the next invoice submitted by Vendor to the Commonwealth for the performance of Services hereunder. Further, Vendor shall execute and deliver any and all additional documents and instruments, and take all other actions, that may be necessary to give effect to this Section 2.3.3, including executing and delivering such forms and documents as may be requested, at any time and from time to time, with respect to the Retained Licenses, whether requested by the Commonwealth or the respective licensors of the Software subject to the Retained Licenses.

2.4 Required Consents

With the Commonwealth's cooperation, Vendor shall obtain, at Vendor's cost and expense, all Required Consents (other than the Government Approvals, as to which each Party shall take such actions as are required of it by the applicable laws or regulations). The Commonwealth's cooperation shall include, at the Commonwealth's cost and expense, the Commonwealth's performance of all obligations under the Leases, Licenses, and Contracts to be performed by it prior to the Service Commencement Date, as described in Sections 2.2 and 2.3. In the event that any Required Consent is not obtained by Vendor prior to the Service Commencement Date, despite the use of all commercially reasonable efforts, then, unless and until such Required Consent is obtained, the Parties shall cooperate with each other in achieving a reasonable alternative arrangement under which Vendor may perform the Services without causing a material breach or violation of any agreement under which a Required Consent is to be obtained. Such reasonable alternative arrangements may include: (i) Vendor's obtaining such consent to Vendor's usage of the assets and rights under the Contracts, Leases, and Licenses as the relevant third party will agree to provide consistent with the license in Section 12.4.1; or (ii) Vendor's procuring, at Vendor's cost and expense, a suitable replacement for the Contracts, Leases, or Licenses, for which it is unable to obtain the Required Consent. Vendor shall be responsible for paying all termination fees associated with the Leases, Licenses and Contracts for which Vendor is unable to obtain Required Consents. Notwithstanding the foregoing, Vendor's obligations under this Section 2.4 shall not be construed to require Vendor to pay down any debts owing by the Commonwealth in order to remove a lien or a security interest in a Lease, License, or Contract or in an asset subject to a Lease, License, or Contract.

2.5 Use of Resources

2.5.1. Dedicated Resources

All Machines used in Vendor's performance pursuant to this Agreement, and all Commonwealth Software, shall be accessed and used only by Vendor and its employees, agents, and Subcontractors, and exclusively for the provision of Services to the Commonwealth and not for Vendor's (or its Subcontractors') internal use or use for the benefit of third parties, except for any such assets that will be used by Vendor to provide services to third parties in addition to the Commonwealth (the "Shared Resources"), as designated on Schedule 2.5, or unless Vendor has provided written notice of its intent to use such assets to provide services to third parties in addition to the Commonwealth and the Commonwealth has approved of such use, in writing and in its sole discretion, prior to commencement of such use by Vendor. Prior to migrating or relocating any of the Services to a Shared Resource environment, Vendor shall provide to the Commonwealth, for the Commonwealth's approval, a proposal for such migration or relocation, including benefits, savings, or risks to the Commonwealth during the Term and upon the expiration or termination of this Agreement. As part of the Disentanglement process, upon the expiration of this Agreement or termination of this Agreement for any reason, the Vendor shall identify, and assist the Commonwealth in procuring, a suitable, functionally-equivalent replacement for any shared hardware or Software then used by Vendor to provide the Services that are not otherwise transferred to the Commonwealth in a Disentanglement in accordance with Section 15. In the event that Vendor shall provide services to any third party using Shared Resources with which Vendor provides Services to the Commonwealth hereunder, such use with such third party shall be subject to all appropriate confidentiality and security-related provisions, which shall ensure that none of the Commonwealth's Confidential Information is shared with any third party, except as permitted hereunder. The Locations described in Section 4 are deemed Dedicated Resources. If Vendor desires to provide services to other Vendor customers from such Locations, Vendor may submit a written proposal describing the proposed use of the Locations, and all Machines and equipment contained therein, and the manner in which the Commonwealth shall share in the benefit of such use of such Locations (which, unless otherwise agreed by the Commonwealth, shall at a minimum be consistent with the requirements set forth in Schedule 10.1).

2.5.2. Shared Resources

Vendor shall use the Shared Resources (if any) in such a manner so as to avoid any material adverse impact or other negative effect on the Systems or the performance of the Services as a result of any other use or user of such Shared Resources. Vendor shall ensure that the Commonwealth is not charged any Fees for the time of Vendor Personnel spent, or any other resources expended by Vendor, while using Shared Resources for the benefit of any Person other than the Commonwealth.

2.6 Unexpected Agreements

Unless the Commonwealth expressly agrees otherwise, Vendor is financially, operationally, and administratively responsible for any lease, contract, or license under which the

Commonwealth receives third-party services directly relating to the Services, regardless of whether it is identified in a Schedule to this Agreement (all such leases, contracts, and licenses (except for the Licenses identified in Schedule 28.70 as being retained by the Commonwealth), collectively referred to herein as the “Unexpected Agreements”), at no additional cost to the Commonwealth. Notwithstanding the preceding sentence or anything else to the contrary elsewhere in this Agreement, those leases, contracts, and licenses that are not identified in a Schedule to this Agreement and are not directly related to the Services (but rather relate to services that Vendor would normally expect to need to provide or have provided by third parties in the operation, support, or maintenance of the buildings and facilities at the Locations that house the Systems, regardless of whether the Services are provided therefrom), shall: (i) not be included in Unexpected Agreements; and (ii) either be (a) assigned to or assumed by Vendor, with Vendor assuming all obligations thereunder, effective as of the Service Commencement Date, or (b) if Vendor refuses to assume responsibilities therefore, terminated by the Commonwealth as soon as reasonably possible after discovery thereof, with Vendor assuming sole responsibility for obtaining any necessary replacement services or agreements therefor.

2.7 Joint Verification

During the first three months after the Effective Date, Vendor may gather, inventory, and validate certain information relating to the Contracts, Leases, and Licenses, including the existence of material obligations under any such Contract, Lease, or License that are not related to the Services to be performed, or the Deliverables to be provided, by Vendor hereunder. If, during such period, Vendor discovers information causing it to reasonably believe that any particular Contract, Lease, or License contains material obligations not related to the Services, Vendor shall promptly bring the matter to the attention of the Commonwealth. If the Parties are subsequently unable to resolve such matter to their mutual satisfaction, either Party may submit such matter to the dispute-resolution process described in Section 24.

3. SERVICES

3.1 Agreement to Perform Services

3.1.1. Definition of Services

As used herein, “Services” means all of the following:

(i) tasks, services, and functions described in this Section 3 and elsewhere in the Agreement or in any of the associated Schedules and Exhibits to this Agreement;

(ii) all IT services being performed by the Affected Employees prior to the Service Commencement Date;

(iii) all IT services accounted for in the categories of the Commonwealth IT Base Case;

(iv) all tasks and services that are incidental, ancillary, customary, or necessary, to and for the performance and receipt of any of the Services and the ongoing operation, integration, modification, configuration, support, and maintenance of the Systems (or the use thereof), or any of the other services described in Section 3 of this Agreement and the associated Schedules, exclusive, however, of services or functions for which the Commonwealth expressly retains responsibility hereunder.

Although the Parties have attempted in this Section 3 and the associated Schedules to delineate the specific services to be provided by Vendor, the Parties acknowledge that some items may not have been specifically identified herein. The specific enumeration in any particular Section of this Agreement of certain of Vendor's duties or obligations is not an implied limitation on, or alteration of, other duties or obligations imposed on Vendor elsewhere in this Agreement. In the event of any dispute between the Parties as to whether a particular service or function falls within the scope of the services to be provided by the Commonwealth's third party service-providers, or by the Commonwealth itself, or within the scope of those to be provided by Vendor, such particular service or function shall be considered to be a part of the Services hereunder if it is consistent with, and reasonably inferable to be within, the scope of the Statements of Work hereunder and it more reasonably would be associated with said Statements of Work than with the scope of the services to be provided by such other service-providers.

3.1.2. Performance of Services

Vendor shall perform all of the Services, and provide the Deliverables, to and for the benefit of the Commonwealth and all End-Users, in accordance with the terms of this Agreement, including the provisions of this Section 3, and all Schedules and Exhibits hereto, and with all performance standards, Critical Milestones, timetables, and deadlines set forth therein. If not otherwise provided in this Agreement, with respect to any tasks, functions, and services that are within the scope of Services but with regard to which there is no set or fixed timetable or schedule for performance and which are therefore to be provided upon the Commonwealth's request, Vendor shall promptly perform such Services, or provide the appropriate Deliverables, upon receipt of an In-Scope Work Request from the Commonwealth. If requested in writing by the Commonwealth (which request may be made at any time or times by the Commonwealth, in its discretion), Vendor shall substitute for any specified Services or Deliverables other or alternative services, tasks, or deliverables reasonably related to the Services (which services, tasks, or deliverables shall, by such substitution, be deemed Services or Deliverables, as applicable), and no such substitution shall result in any adjustment to the Fees, unless otherwise mutually agreed by the Parties in writing. Vendor shall at all times use all commercially reasonable efforts (which, at a minimum, shall be consistent with best industry standards and practices) to avoid, prevent, and mitigate any material adverse effect on the Systems or the continuity and quality of the Services being provided to the Commonwealth. Except as expressly set forth in this Agreement, Vendor shall furnish all labor, materials, equipment, products, tools, transportation, and supplies required to perform the Services, operate and support and maintain the Systems, and provide the Deliverables. With regard to, and as part of, the Services to be performed, Vendor shall function at all times and in all respects as if it were the Commonwealth's internal data processing and network operations and support

department, and Vendor shall perform all Services and functions, and fulfill all responsibilities, appropriately associated with that role.

3.2 Cutover

3.2.1. Preparation

Prior to the Service Commencement Date, Vendor shall make such offers of employment as are necessary in order for Vendor to provide all Services on and after the Service Commencement Date.

3.2.2. Transition

On the Service Commencement Date, Vendor, with the reasonable cooperation of the Commonwealth, shall accomplish the seamless and orderly transition from the manner in which the Commonwealth is then receiving the kinds of services that are encompassed within the Services to be provided by Vendor under this Agreement, to the provision of the Services to the Commonwealth by Vendor. Such transition shall be accomplished by Vendor in accordance with the Transition Plan in a timely, seamless manner, so as to have no adverse effect upon the Commonwealth or upon the quality or continuity of the Systems, or the services that are to constitute the Services, and without any impact whatsoever on any of: (i) the End-Users; (ii) the Systems; or (ii) the functions, services, operations, usage, development, support, or maintenance of the underlying IT infrastructure. From and after the opening of business on the Service Commencement Date, Vendor shall ensure that there is no material adverse effect on the quality of the IT-related services provided to the Commonwealth and to the End-Users, that would not have otherwise occurred had the transition or migration contemplated by this Agreement not taken place. If Vendor fails to complete the transition of all Services to Vendor by [REDACTED], 200[REDACTED], the Commonwealth may terminate this Agreement for cause without requirement of notice or opportunity for cure.

3.2.3. Transition Plan

The Transition Plan, attached as Schedule 3.2 hereto, sets forth a number of tasks, activities, and projects to be completed by Vendor, for the benefit of the Commonwealth, between the Effective Date and such times on or after the Service Commencement Date as all Systems and Services have been successfully transitioned to Vendor. In order to ensure the timely and seamless transition of the Systems and the Services to Vendor, the Transition Plan sets forth the particular individual responsible for the completion of each listed task, activity, and project and the date by which such completion shall occur. The tasks, activities, and projects described in the Transition Plan include specific technology development, installation, and procurement activities, and the development and implementation of Vendor's operational and change-control processes for the IT environment at the Locations. Vendor's Relationship Manager shall provide the Commonwealth's Relationship Manager with a written update as to the status and progress of the activities described in the Transition Plan at least weekly, commencing with the Effective Date and continuing until all such Transition Plan activities have been successfully completed.

3.2.4. Early Access

During the period between the Effective Date and the Service Commencement Date, the Commonwealth shall provide Vendor with full access to the Affected Employees, but solely for the purpose of reasonably cooperating with Vendor in the accomplishment of the transition to Vendor's provision of the Services on the Service Commencement Date, and to provide information and answer questions from Affected Employees regarding offers of employment.

3.2.5. Cutover

In the event that the Commonwealth determines, in its sole discretion, at any time during the transition of the Services, and of the operation and support and maintenance of the System, to Vendor, that the Commonwealth, the End-Users, or the quality or continuity of the Services or the Systems has been materially and adversely affected in any way, or that any such material and adverse effect seems reasonably likely to occur, then the Commonwealth may direct Vendor to stop and proceed no further with such transition until such time as Vendor shall have: (i) analyzed the cause of such effect; (ii) developed a reasonable plan for resuming such transition in such a manner as to eliminate or avoid such effect (and any other negative or adverse consequences of such transition; and (iii) received the Commonwealth's approval to proceed with such transition, which approval shall not be unreasonably withheld. Following any resumption of the transition of the services to Vendor, if the Commonwealth again determines that a material and adverse effect has occurred, then the process described above in the Section 3.2.5 shall be repeated. Nothing in this Section 3.2.5, nor the Commonwealth's exercise of its rights, as described above, pursuant to this Section 3.2.5, shall in any way reduce, limit, or obviate any obligation of Vendor to meet a Critical Milestone or any other schedule, target, completion schedule, or other commitment specified in this Agreement.

3.3 Statements of Work

From and after the Effective Date, at all times during the Term, except as otherwise expressly stated herein, Vendor shall perform all of the tasks and functions, provide the Commonwealth with all of the Services, and fulfill all of the responsibilities and obligations described in this Agreement (including in the statements of work included in Schedule 3.3 hereto (each, a "Statement of Work") and all other Schedules and Exhibits hereto), as such tasks, functions, services, responsibilities, and obligations may be modified, supplemented, and enhanced during the Term, in accordance with this Agreement.

3.4 Administrative Services

As an integral part of each category of Services, Vendor shall provide all administrative and clerical Services required to ensure the prompt, efficient, and productive functioning of all Vendor Personnel and Managed Employees. Such Services shall include: ensuring appropriate cost and budget performance under the Agreement and preparing and delivering all financial and status reports; managing the current budget and planning and forecasting future-year budgets; preparing and distributing all contract Deliverables; ordering

supplies; preparing payroll and billing; maintaining inventories of supplies, technology, and equipment; entering and compiling data from statistical and other reports required by the Commonwealth; promptly filling all Vendor Personnel vacancies through the recruiting and hiring of qualified individuals; participation in required reporting-functions, including the preparation of periodic reports and annual-plan updates, in accordance with Section 17.1; and performing other business functions that are necessary to enable and facilitate the performance of the Services, and the operation and support and maintenance of the Systems, in accordance with this Agreement.

3.5 Technological Improvements

In accordance with this Agreement, Vendor shall, at all times, promptly provide the Services, operate and support and maintain the Systems that constitute the Commonwealth's IT environment, and provide a level of support and assistance to all End-Users that conforms to the highest commercial standards for such Services. Nevertheless, the Parties acknowledge that the Services will evolve and be supplemented, modified, enhanced and/or replaced in the normal course of business during the Term, both to keep pace with and utilize technological advancements and improvements in the method of delivering IT-related services, and to keep pace with changes and additions to the services and products offered by the Commonwealth. Vendor also acknowledges that the IT environment is critical to the Commonwealth's business success, that the Commonwealth's needs and requirements with regard to the IT environment shall evolve and change over time, and that the need for new or modified functionality will arise from time to time. Therefore, from time to time during the Term, but not less frequently than once each Contract Year, Vendor shall meet and confer with VITA and suggest any reasonable and appropriate changes needed or that might be considered to keep pace with and take advantage of the latest and most useful technological advancements and improvements in Vendor's performance of the Services and the use, operation, support and maintenance of the Systems, and any changes to the Fees that would be associated with the development, implementation, and use of such advancements and improvements. VITA may consider such suggestions, along with other factors affecting or related to the Commonwealth's need for IT services. Any such suggestions that VITA approves and requests Vendor to develop and implement following such discussions shall be promptly developed, delivered and implemented by Vendor, subject to reasonable and thorough acceptance testing procedures.

3.6 Asset-Related Responsibilities

With regard to the Commonwealth's IT environment, Vendor shall at all times:

(a) have sole support, operational, administrative, and financial responsibilities for [(i) the Purchased Assets, and (ii)] the properties that are the subject of the Licenses (and any other licenses of software for which Vendor is the licensee pursuant to (c) below) or the Leases;

(b) have sole procurement responsibilities and support/operational responsibilities for additional hardware and Software that necessary to and for the performance and delivery of any Services in accordance with this Agreement; and

(c) be the sole owner or licensee, as the case may be, of such assets, properties, hardware, and Software as are described in clause[s (a) and] (b) above;

(d) be the licensee of other Software that is to be used in the performance of the Services, or the operation and support and maintenance of the Systems, in accordance with this Agreement, if so doing would not adversely affect the cost to the Commonwealth of receiving the Services or operating its business, or the potential cost that the Commonwealth would incur in Disentanglement.

Such responsibilities as described above in this Section 3.6 shall be effective on, and shall be performed by Vendor with respect to all periods during the Term on or after, the Service Commencement Date. Vendor shall have responsibility for upgrading, modifying, or replacing the Purchased Assets as may be necessary for the performance of the Services in accordance with the Service Levels and the other requirements of this Agreement, or as may otherwise be Vendor's responsibility in connection with the technology refreshments obligations described in Section 3.11. Projects (other than Current Projects, as described in Section 3.7) initiated by the Commonwealth after the Effective Date, without the prior written consent of Vendor (which consent may not be unreasonably withheld), and that require upgrading, modifying, or replacing the Purchased Assets, will remain the responsibility of the Commonwealth. All upgrades, modifications, and replacements to the Purchased Assets shall, subject to the Disentanglement provisions hereof, be and remain the property of Vendor, except that those upgrades, modifications, and replacements to the Purchased Assets that are initiated by the Commonwealth in connection with a project initiated by the Commonwealth after the Effective Date without the prior written consent of Vendor, as described in the immediately preceding sentence, shall be and remain the property of the Commonwealth. Purchased Assets that are no longer being used in connection with the Services hereunder shall be disposed of by Vendor in accordance with procedures set forth in the Procedures Manual and the other requirements of this Agreement, and in accordance with Commonwealth policies and procedures for the removal of data from, and recycling of, such assets. In fulfilling its obligation to procure resources (including technology refreshments) hereunder, Vendor shall provide the Commonwealth with new assets, and Vendor shall not be entitled to fulfill such obligation through the use of repaired, refurbished, or reconditioned assets. Except as expressly provided otherwise in Section 3.5 or this Section 3.6, Vendor shall procure such resources and technology refreshments at no additional cost to the Commonwealth. Vendor shall schedule such procurements and technology refreshments in advance and in such a way as to prevent any interruption or disruption of Services to the Commonwealth or any of the End-Users. Vendor shall be required to obtain the prior written consent of the Commonwealth before acquiring, maintaining, upgrading, or refreshing any asset that is used or to be used by the Commonwealth, Vendor, or third parties in connection with the provision of the Services, if such acquisition, maintenance, upgrade, or refreshment could reasonably be expected to result in any additional cost to the Commonwealth, whether in the Commonwealth's daily operations or upon or after Disentanglement, or any diminution in the nature or level of performance of any portion of the Services.

3.7 Current Projects

On the Service Commencement Date, at no additional charge to the Commonwealth, Vendor shall assume responsibility for continuing the development and implementation of all Current Projects without material interruption and either (i) in accordance with then current written Commonwealth plans for such Current Projects, if such plans exist and have been furnished to Vendor, or (ii) if no such written plans have been furnished to Vendor, as such Current Projects are being performed as of the Service Commencement Date. Within ninety (90) days after the Service Commencement Date, Vendor shall provide the Commonwealth with a written evaluation and assessment of the status of all Current Projects known to Vendor.

3.8 Procedures Manual

Within sixty (60) days after the Effective Date, Vendor shall develop to the satisfaction of the Commonwealth, a Procedures Manual applicable to all of the Commonwealth's IT environment and the Services, except that, to the extent any portions of the Procedures Manual are developed prior to the expiration of such sixty (60) day period, Vendor shall deliver such portions to the Commonwealth as soon as they are so developed. The Procedures Manual shall address each of the items described in Schedule 3.8 hereto. The Commonwealth reserves the right to identify (at any time, and from time to time, during the Term) and notify Vendor of such other items, in addition to those listed in Schedule 3.8, that the Commonwealth may deem appropriate for inclusion in the Procedures Manual. At least thirty (30) days prior to each anniversary of the Service Commencement Date, Vendor shall revise the Procedures Manual as appropriate to reflect any changes to the Commonwealth's IT environment, or related requirements, and submit such revised Procedures Manual to VITA for review, comment, and approval. The Procedures Manual shall be owned by the Commonwealth.

3.9 Disaster Recovery Plan

Vendor shall strictly adhere to and conform with the Disaster Recovery Plan, the initial version of which is attached hereto as Schedule 3.9. The Disaster Recovery Plan shall address and protect the Commonwealth's entire IT environment and the Commonwealth may (at any time, and from time to time, during the Term) identify and notify Vendor in writing of other items, in addition to those described in Schedule 3.9, that the Commonwealth deems appropriate for inclusion in the Disaster Recovery Plan. Vendor shall promptly review and discuss with the Commonwealth all such additional items and, unless the Commonwealth agrees otherwise in writing, promptly revise the Disaster Recovery Plan to properly address such additional items. In addition, prior to each anniversary of the Service Commencement Date, Vendor shall revise the Disaster Recovery Plan as appropriate to reflect any changes to the Commonwealth's IT environment, or related requirements, and submit such revised Disaster Recovery Plan to VITA for review, comment, and approval. Vendor shall also periodically (not less than once per Contract Year) test the procedures set forth in the Disaster Recovery Plan to ensure that Vendor is capable of promptly and successfully executing them. Vendor shall promptly provide the Commonwealth with a written report summarizing the results of each such test and promptly take appropriate action to cure all deficiencies, and resolve all problems, that are discovered as a

result of each such test, performing re-testing as necessary to ensure that such cures and resolutions are effective. The occurrence of a Force Majeure Event shall not relieve Vendor of its obligations to provide disaster recovery Services pursuant to this Section 3.9 and in accordance with the Disaster Recovery Plan, except in the event and to the extent that such Force Majeure Event, or another Force Majeure Event, materially and adversely affects or prevents the performance of such disaster recovery Services. Except as provided in the immediately preceding sentence, and notwithstanding any other provisions related to the occurrence of a Force Majeure Event or anything else to the contrary in this Agreement, any material breach or violation by Vendor of its obligations regarding, or set forth in, the Disaster Recovery Plan shall be deemed an incurable and material breach of this Agreement by Vendor.

3.10 Security Management Services

Vendor shall provide appropriate and comprehensive security Services, using industry best practices and methods and state-of-the art, commercially available technology, to at all times ensure the security, integrity, and confidentiality of the Systems and Commonwealth Data, and to protect against unauthorized access to, use of, or intrusion into, the Systems and unauthorized disclosure of the Commonwealth Data. Without limiting anything set forth in the Statements of Work, such Services shall include, in accordance with Section 13, providing a centralized Vendor security organization or group that is responsible for all aspects of such security Services, routinely performing all necessary and appropriate security assessments and evaluations, developing and implementing a security plan (subject to the reasonable written approval of the Commonwealth) that conforms in all respects to the requirements of all applicable federal, state and local laws, regulations, and ordinances relating to security, privacy, or confidentiality, ensuring compliance with Commonwealth and VITA security policies and procedures, performing all necessary and appropriate security-related audits and reports, and promptly providing VITA with a full and complete copy of each such report. Vendor shall also provide physical security for all Locations, IT security-awareness training programs for all Vendor Personnel and, as requested by the Commonwealth, for the Commonwealth personnel, and operational support of security processes for the Systems. Specific security-related issues that shall be appropriately addressed by Vendor in providing the Services include, in accordance with Section 13: (i) physical security of Vendor-owned and leased buildings and facilities, including security guards, physical barriers to entry, and appropriate hardening of facilities; (ii) administering, auditing, and maintaining appropriate physical and logical access controls (with multiple, redundant layers) at all points of ingress or egress to the Locations and the Systems, including firewalls, intrusion monitors (including network-based detection), appropriate compartmentalization, encryption (128-bit or higher) of sensitive or confidential transmissions, and methods to ensure secure wireless and remote access; (iii) installation and implementation of tools to appropriately protect the Systems from viruses and other Disabling Devices (in accordance with Section 3.15), denial-of-service attacks, malicious email attachments, and other security threats; (iv) prohibiting and disabling the use of activities that involve a high security risk, including chatting and scripting; and (v) implementing and enforcing appropriate and thorough policies and procedures to ensure the ongoing security of the Locations and the Systems, including policies that address proper systems configuration management, appropriate use of filtering and monitoring tools (and proper analysis of the output

of such tools), and maintaining appropriate backups and procedures for handling incidents that may arise or security breaches that may occur. Any breach or violation by Vendor of its obligations regarding, or set forth in, this Section 3.10 shall be deemed an incurable and material breach of this Agreement by Vendor.

3.11 Technology Refresh Plan

The Technology Refresh Plan, attached as Schedule 3.11 hereto, describes in detail Vendor's commitments to periodically refresh, at no additional cost to the Commonwealth, the technology used to deliver the Services or otherwise in connection with the Commonwealth's IT environments. At least forty-five (45) days prior to each anniversary of the Service Commencement Date, Vendor shall revise the Technology Refresh Plan as appropriate to reflect any changes to such environment, and related requirements, and submit such revised Technology Refresh Plan in writing to VITA for review and comment. Within thirty (30) days after receipt of such revised Technology Refresh Plan, VITA shall notify Vendor in writing whether such revised plan shall have been accepted by the Commonwealth, in its reasonable discretion, or otherwise describe in reasonable detail the deficiencies of such revised plan, in which latter case Vendor shall have an additional period of fifteen (15) days to make further revisions and resubmit such revised plan to VITA for review, comment and, when such revised plan is reasonably acceptable to the Commonwealth, approval. Such obligations of Vendor to refresh technology shall continue according to the schedule set forth in the Technology Refresh Plan until expiration or termination of the Term, including continuation throughout any renewals or extensions of the Term that may occur in accordance with Section 14.1. For example, in no event shall Vendor be excused from any scheduled technology refreshment obligations scheduled to be performed in the final months of the Term, as such Term may have been renewed or extended.

3.12 Service Levels

3.12.1. Service Level Commitment

Except as otherwise specified in this Agreement, from and after the Service Commencement Date, Vendor shall perform all Services at levels of accuracy, quality, completeness, timeliness, responsiveness and resource efficiency that are equal to or better than the highest or best of (a) the Service Levels, (b) the accepted industry norms applicable to the performance of such Services by top tier service providers, if such industry norms are documented and verifiable, or (c) the highest or best documented or otherwise verifiable levels of accuracy, quality, completeness, timeliness, responsiveness and resource efficiency received by any Eligible Customer in the twelve (12) months prior to the Service Commencement Date. Vendor shall be responsible for meeting or exceeding the applicable Service Levels even where doing so is dependent on the provision of Services by Subcontractors or other non-Vendor Personnel acting under the project-management direction of Vendor, including the Managed Employees. The Service Level methodology applicable to the Service Levels is set forth in Schedule 3.12. Any resources or Machines utilized by Vendor pursuant to the terms hereof shall incorporate methods permitting measurement of all performance-related Service Levels. Vendor shall measure and compare the actual or observed performance resulting from Vendor's

performance of the Services with the Service Levels during each month. Vendor shall prepare and deliver or make available to VITA, by the tenth (10th) business day of the following month, a Service Level report of the form described, and with such other characteristics as are listed, in Schedule 17.1.

3.12.2. Monitoring and Measuring Tools and Processes

Vendor shall implement measurement and monitoring tools and produce the metrics and reports necessary to measure its performance against any the Service Levels and shall deliver to VITA such reports in accordance with the frequency set forth in Schedule 3.12. Upon request in connection with an audit, and at no additional charge to the Commonwealth, Vendor shall provide the Commonwealth or its designees with information and access to tools and procedures used to produce such metrics.

3.12.3. Changes to Service Levels

In addition to Vendor's continuous improvement obligations set forth in Schedule 3.12, the Parties shall review and discuss possible adjustments to the Service Levels from time to time, but not less frequently than at the end of each Contract Year. Within thirty (30) days after the end of each Contract Year, the Commonwealth may propose reasonable and appropriate adjustments or changes to the Service Levels to Vendor in writing, in accordance with Schedule 3.12. Vendor shall review each such proposal, and notify VITA in writing of any reasonable objections within ten (10) days. The Parties shall then use all commercially reasonable efforts to negotiate in good faith to resolve any differences regarding such proposed changes and implement a version of such proposed changes that is acceptable to each Party. Throughout the Term, Vendor shall also continuously evaluate Service Levels and Service Level performance, providing VITA with written suggestions for proposed changes at least once every six (6) months. Vendor shall also make any new and better ways to improve, or to measure and monitor, its performance that it discovers promptly available to the Commonwealth.

3.13 Root Cause Analysis, Predictive Analysis and Resolution

3.13.1. Process

Upon Vendor's discovery of, or, if earlier, Vendor's receipt of a notice from the Commonwealth in respect of, (i) Vendor's failure to meet a Critical Milestone, or (ii) Vendor's failure to provide the Services, or to operate, support, and maintain the Systems, in accordance with the Service Levels and this Agreement, Vendor shall promptly (in any event, within five (5) days) or, in the case of a failure described in clause (i) above, immediately, perform a Root Cause Analysis to identify the cause of such failure and (a) in the case of a failure described in clause (i) above, complete all work and activities associated with such Critical Milestone, (b) in the case of a failure described in clause (ii) above, correct such failure (regardless of whether caused by Vendor), and (c) provide VITA and the applicable Eligible Customer with a written report describing in detail the cause of, and procedure for correcting, such failure and providing the Commonwealth with reasonable evidence that such failure will not recur. The correction of any such failure shall be performed entirely at Vendor's expense

unless it has been determined, by mutual agreement of the Parties or through the dispute-resolution process set forth in Section 24, that Vendor was not a material, contributing cause of such failure, that a breach or default by the Commonwealth (or any agent, subcontractor, or other third party under the direction and control of the Commonwealth), with regard to any of its duties and obligations under this Agreement, was the direct and predominant contributing cause of such failure, and that Vendor could not have foreseen, avoided, or worked around, or promptly mitigated the effects of, such failure without expending a material amount of additional time or resources. In the event that all of the conditions of the immediately preceding sentence are met, then to the extent that such a breach or default by the Commonwealth (or any agent, subcontractor, or other third party under the direction and control of the Commonwealth) was the cause of such failure: (A) with regard to a failure by Vendor to provide the Services, or to operate, support, and maintain the Systems in accordance with the Service Levels, the Commonwealth shall reimburse Vendor for Vendor's expenses reasonably incurred in the correction of such failure; and (B) with regard to a failure by Vendor to meet a Critical Milestone, Vendor shall be entitled to temporary relief, and shall be excused, from its obligation to meet such Critical Milestone. For purposes hereof, the pre-existing condition and capabilities of the Commonwealth's properties and systems shall not be deemed to be a material cause of any failure.

3.13.2. Resolving Disputes

In the event of any dispute as to whether a particular defect, malfunction, or other difficulty was caused by products or Services furnished by Vendor or by products or services furnished by any third-party provider of the Commonwealth Resources, then Vendor shall promptly perform a Root Cause Analysis, as described in Section 3.13.1, soliciting input from VITA, the applicable Eligible Customer and the involved third parties, as appropriate. Vendor shall promptly share the report of such analysis with the Commonwealth and involved third parties in a good faith effort to resolve any such dispute. If the dispute is not so resolved, then such dispute shall be handled in accordance with the dispute-resolution principles set forth in Section 24 of this Agreement.

3.13.3. Pending Disputes

Unless otherwise directed by the Commonwealth, and notwithstanding the pendency of any dispute or Root Cause Analysis as to the cause of a defect, malfunction, or difficulty, Vendor shall take prompt and reasonable steps to correct such defect, malfunction, or difficulty. To the extent that it is determined, based on the results of the Root Cause Analysis, that Vendor or Vendor's Subcontractors, or any products or services furnished by Vendor, were responsible for such defect, malfunction, or other difficulty, such correction will be at Vendor's cost. To the extent that it is determined, based on the results of the Root Cause Analysis, that any party or parties other than Vendor or Vendor's Subcontractors were responsible for such defect, malfunction, or other difficulty, such correction will be at the Commonwealth's cost, and the Commonwealth and Vendor shall negotiate in good faith a fair amount to be paid to Vendor for Vendor's corrective activities.

3.13.4. Predictive Analysis

During the Term, Vendor shall proactively monitor the use and performance of the Services and the Systems, including the analysis of historical trends and usage data and information, so as to identify circumstances that pose a risk of Vendor's failure to meet a Critical Milestone, or to provide the Services, or to operate, support, and maintain the Systems, in accordance with the Service Levels and this Agreement. Vendor shall promptly (in any event, within five (5) days) take appropriate action to eliminate any such identified risks. Such actions shall be performed entirely at Vendor's expense except as otherwise provided in Schedule 10.1.

3.14 Systems Compatibility and Integration

3.14.1. Compatibility of Resources

Vendor shall ensure that the Systems, all Services, and all Software, hardware, equipment, and other resources and materials (collectively, the "Provided Resources") that are provided by Vendor to the Commonwealth, otherwise utilized by Vendor, or approved by Vendor for utilization by the Commonwealth, in connection with the use or operation of the Systems, or with the providing or receiving of the Services, shall be successfully and fully integrated and interfaced with, and shall be compatible with, all Commonwealth Software and all other Software, services, systems, items, and other resources (collectively, the "Commonwealth Resources") that are owned by or leased or licensed to the Commonwealth, or that are provided to the Commonwealth by third-party service-providers, and, except as otherwise provided in this Agreement, Vendor shall ensure that neither the Systems nor any of the Services, nor any other items provided to the Commonwealth by Vendor, shall be adversely affected by, or shall adversely affect, any the Commonwealth Resources, whether as to functionality, speed, interconnectivity, reliability, availability, performance, capacity, responsiveness, or otherwise. Vendor shall be the Commonwealth's representative for the purpose of, and Vendor will be responsible for, managing the Commonwealth Resources and coordinating necessary activities of the Commonwealth, and its third-party service-providers, to the extent necessary and appropriate to ensure that the Provided Resources are successfully integrated and interfaced with, and compatible with, the Commonwealth Resources.

3.14.2. Integration and Cooperation

To the extent that any interfaces need to be developed or modified in order for the Provided Resources to integrate fully and successfully, and be compatible, with the Commonwealth Resources, Vendor shall be responsible for the development or modification of such interfaces and for such integration, and all such activities shall be deemed to be Services within the scope of this Agreement. At all times during the Term and during the period in which Vendor is obligated to provide Disentanglement Services pursuant to Section 15, Vendor shall work as requested with other service-providers of the Commonwealth to coordinate the provision of Services and the use, operation, support, and maintenance of the Systems with the services and systems of such other service-providers. Such coordination shall include: (i) facilitating with such other relevant service-providers the timely resolution of all problems that may arise

and impact the Systems or the Services or the respective use, operation, support, maintenance, or provision thereof, regardless of the actual or suspected root cause of such problems, and using all commercially reasonable efforts to obtain and maintain the active participation, cooperation, and involvement of such other service-providers as is required for such problem-resolution; (ii) providing information concerning any or all of the Provided Resources or the data, computing environment, and technology direction used in operating, supporting, and maintaining the Systems and providing the Services; (iii) working with the Commonwealth's other service-providers in the integration of the Systems and the Services with the Commonwealth Resources in the Commonwealth's environment and, as reasonably requested, the integration and interfacing of the services of such other service-providers with the Systems and the Services; (iv) providing reasonable access to, and use of, the Provided Resources; and (v) performing tasks reasonably assigned to Vendor in connection with the Systems and the Services and all of the foregoing activities described in this sentence. If any of the foregoing require the disclosure of any proprietary information or Confidential Information of Vendor or any of its Subcontractors to any third party, such third party shall enter into a Confidentiality Agreement, with terms at least as restrictive as those in this Agreement with the Commonwealth, that names Vendor or the applicable Subcontractor as a third-party beneficiary.

3.15 Viruses; Disablement

Vendor shall use industry best practices regularly to identify, screen, and prevent any Disabling Device in resources utilized by Vendor or the Commonwealth in connection with the provision or receipt of the Services and shall not itself knowingly or intentionally install (and shall prevent its Subcontractors from installing) any Disabling Device in resources utilized by Vendor, the Commonwealth, or any Subcontractor, in connection with the provision or receipt of the Services. A "Disabling Device" is a virus, timer, clock, counter, time lock, time bomb, or other limiting design, instruction, or routine that would erase data or programming or cause any resource to become inoperable or otherwise incapable of being used in the full manner for which such resource was intended to be used. Vendor shall assist the Commonwealth in reducing and mitigating the effects of any Disabling Device discovered in any resource related to the provision or receipt of the Services, especially if such Disabling Device is causing a loss of operating efficiency or data.

3.16 ISO 9000 Standards

Vendor shall utilize procedures and processes that are consistent with ISO 9000 certification (or such certification class as shall succeed ISO 9000, as applicable) with respect to its provision of the Services and shall continually ensure that all of its procedures and processes comply with the requirements of such certifications or successor certifications. In addition, Vendor shall ensure that it, its employees, agents, and Subcontractors take no action that results in the Commonwealth losing any ISO 9000 or similar quality certification in existence as of the Effective Date, or which the Commonwealth obtains or seeks to obtain after such date.

3.17 End-User Satisfaction and Communications

VITA, or a third party engaged by VITA, shall conduct End-User satisfaction surveys semi-annually during the Term, or more frequently as the Commonwealth may reasonably request. Vendor shall provide reasonable assistance to VITA to: (i) identify the appropriate sample of End-Users who shall receive such surveys; (ii) distribute the surveys to such End-Users; and (iii) encourage participation by such End-Users in completing such surveys, in order to obtain meaningful results. VITA shall gather, analyze, and evaluate the results of the survey, and such results shall be reviewed with the Vendor Relationship Manager. VITA, with Vendor's assistance, shall develop an IT improvement plan, which shall propose changes to the Commonwealth's and Vendor's IT policies and practices that incorporate the results of, and reflect information learned from, the End-User satisfaction surveys. Such IT improvement plans, and the results achieved through the use thereof, shall be reviewed by the Parties, and such plans modified appropriately, not less frequently than once each Contract Year.

3.18 Non-Exclusivity

Nothing herein shall prevent the Commonwealth from providing for itself or obtaining from any third party, at any time during the Term or thereafter, the Services, the Deliverables, or the Systems, or any type of products or services in any way analogous, similar, or comparable to the Services, the Deliverables, or the Systems, as applicable, or any other products or services. Nor shall anything in this Agreement be construed or interpreted as limiting the Commonwealth's right or ability during the Term to increase or decrease its demand for Services hereunder. In the event that the Commonwealth elects to provide for itself (or engage third parties to provide for it) any IT services not provided under this Agreement, Vendor shall provide to the Commonwealth, or its chosen service-provider, reasonable cooperation, assistance, and access, as necessary (to the employees of Vendor and Vendor's Subcontractors, and to the Locations and the IT infrastructure of the Systems), to facilitate the integration and interfacing of such other IT with the Systems, the Services, and the Deliverables.

3.19 Future Work

Except as otherwise provided elsewhere in this Agreement, Vendor and Key Subcontractors shall be free to compete for additional or further business or contracts with the Commonwealth on an equal basis with other contractors. If Vendor or a Key Subcontractor, in performing the Services or otherwise in its performance under this Agreement, actively participates in the development of specifications or statements of work, all or a portion of which are incorporated into a request for proposal or other solicitation for bids, Vendor and such Key Subcontractor, whether as a prime contractor or a subcontractor, shall be ineligible to bid for or perform work under any subsequent contract entered into by the Commonwealth pursuant to, or as a direct result of, such request for proposal or solicitation.

3.20 Key Third-Party Contractors

Vendor shall, following the execution of this Agreement, ensure that the third-party contractors identified in Schedule 3.20, each of whom is a party to a Contract with the

Commonwealth as of the Effective Date, perform in accordance with this Agreement, including the Service Levels, and comply with all applicable duties and obligations imposed on Vendor under this Agreement. Vendor shall be responsible for any failure by such third-party contractors to comply with any of the duties or obligations imposed on Vendor under this Agreement as if such failure to comply was committed by Vendor or Vendor Personnel.

3.21 Location of Performance

Except where Vendor obtains the Commonwealth's prior written approval, Vendor shall perform all of the Services only from or at Locations within the geographic boundaries of the Commonwealth. Any Commonwealth approval for the performance of Services outside of the geographic boundaries of the Commonwealth shall be limited to the specific instance and scope of such written approval, including the types of Services and Locations involved.

4. DATA CENTERS

Vendor shall ensure that the data centers that shall serve as Locations for the performance of Services hereunder shall comply with all of the requirements set forth in Schedule 4 hereto. Without limiting the foregoing, Vendor hereby agrees that the primary data center shall be located in metropolitan Richmond, Virginia, and that the secondary or backup data center shall be located within the Commonwealth at least one hundred (100) miles from the primary data center. Vendor shall obtain the Commonwealth's prior written approval of the location of each data center and any changes thereto. Vendor shall take all necessary action to ensure that the Commonwealth (or its designee) may continue to use the data centers after the Term if the Commonwealth so elects as part of Disentanglement, including the option to purchase any of the data centers or assume any Leases (or a portion thereof) to the data centers in accordance with Sections 15.4.6 and 15.4.7. **[Note to Vendor: the Commonwealth wishes to explore with Vendor various financing/ownership/leasing options potentially available with respect to the data centers.]**

5. PROVISION OF RESOURCES BY COMMONWEALTH

5.1 Assigned Tasks

The Commonwealth agrees to perform all tasks specifically and expressly assigned to it in this Agreement, or in any Schedule or Exhibit attached hereto, and may, in its discretion, use other contractors or subcontractors to perform any such task.

5.2 Office Space and Furnishings

The Commonwealth shall make available to Vendor Personnel and Vendor's Subcontractors such reasonably unencumbered access, and such office space, furnishings, and storage space at certain Locations as designated in Schedule 28.72, as are reasonably necessary and appropriate for them to perform the Services and perform Vendor's obligations under this Agreement, at the Commonwealth's facilities and premises (other than those leased by Vendor

pursuant to this Agreement), in a manner similar to that in which the Commonwealth makes such access, space, furnishings, and storage space available to its own employees performing similar work. All such office space, furnishings, and storage space, and all assets and facilities installed or operated on the Commonwealth's premises, are provided "AS IS, WHERE IS," without warranties of any kind, express or implied, and are to be used by Vendor exclusively as necessary and appropriate for the performance of Vendor's obligations under this Agreement. Vendor shall be responsible, and reimburse VITA, for any fees or charges imposed by the Eligible Customers for use of such office space, furnishings and storage space. The Commonwealth reserves the right to direct Vendor to cease using all or part the office space, furnishings and storage space at any of the Locations designated in Schedule 28.72 and to thereafter use such space for its own purposes. In such case, Vendor shall be responsible for obtaining suitable replacement space as required to continue to perform the Services, and the costs associated with such replacement space and relocating thereto.

5.3 Additional Resources

The Commonwealth will be responsible for reasonable local telephone access charges incurred by Vendor Personnel using the Commonwealth's telephones at the Commonwealth's facilities or premises (other than those leased by Vendor pursuant to this Agreement) in the performance of Vendor's obligations under this Agreement. Vendor shall be responsible for all other telephone, toll, and telecommunications charges (including all usage-based charges) incurred by, or attributable to, Vendor Personnel. The Commonwealth shall also provide Vendor with reasonable access to the Commonwealth's personnel as necessary and appropriate for Vendor to fulfill its obligations under this Agreement. Except as otherwise specified in this Agreement, and in accordance with the Statements of Work, Vendor shall be solely responsible for providing for itself, at no cost or expense to the Commonwealth, such office space, network access, utilities (e.g., HVAC, electrical power, water, and ordinary, daily janitorial services), data processing equipment, telecommunications lines and equipment, telephones, telephone and computer connections, parking, furniture, furnishings, and storage space as Vendor may require in order to perform the Services. The procurement of any special furnishings, equipment, and supplies required or otherwise needed for the use of Vendor Personnel is the exclusive responsibility of Vendor.

6. RELATIONSHIP MANAGEMENT

6.1 Status Reports

Periodically during the Term of this Agreement, but not less frequently than once each month, Vendor shall deliver to the Commonwealth's Relationship Manager a written report summarizing the progress of the Services and the operation of the Systems during the preceding month, including problems that have occurred and could delay Vendor's performance of anticipated activities and expected problems during the upcoming month (each such report, a "Status Report"). At a minimum, each Status Report shall include: (i) the current status and progress of the performance of the Services and the ongoing operation, support, and maintenance of the Systems, and an assessment of how such status and progress compares to the Critical Milestones, the Transition Plan, and any other schedules or deadlines set forth in the Statements

of Work; (ii) any actual delays; (iii) any reasonably anticipated delays; (iv) any failures, or correction of any failures, with regard to which Vendor is performing, or has performed, a Root Cause Analysis, as described in Section 3.13; and (v) such other information as the Commonwealth may reasonably request from time to time. The Commonwealth shall have the right to assume that Vendor does not know of any delays, problems, difficulties, or issues that may have an adverse impact (whether from a timing, cost, implementation, or performance standpoint) upon the Services or the Systems unless Vendor specifically identifies such delays, problems, difficulties, or issues in such Status Reports. Notwithstanding the foregoing, Vendor shall promptly (but in no event more than five (5) business days after Vendor first knew or should have known of such obstruction or delay) notify the Commonwealth's Relationship Manager, in writing, in the event that Vendor is materially obstructed or delayed in its performance of the Services, or the operation, support, or maintenance of the Systems, by any act, omission, or delay caused by the Commonwealth or its agents or employees, including any delay or failure by the Commonwealth to perform any of its obligations under this Agreement. Promptly after any such notification, the Parties shall confer and mutually agree upon any appropriate extension of the time period in which Vendor must complete the affected Services, in accordance with the governance procedures described in Schedule 6.3.

6.2 Status Meetings

During the Term, representatives of the Parties shall meet periodically as set forth in Schedule 6.3 or as requested by the Commonwealth to discuss matters arising under this Agreement. Each Party shall bear its own costs in connection with the attendance and participation of such Party's representatives in such meetings. The place and time, and whether to meet via teleconference or in person, shall be as determined by the Commonwealth (or as otherwise mutually agreed upon by the Parties).

6.3 Governance Model

The Parties will manage their relationship under this Agreement using the governance model in Schedule 6.3.

6.4 In-Scope Work Requests

6.4.1. General

If the Commonwealth requires the performance of Services that are within the scope of Services described in this Agreement and the Statements of Work, but that are not then being performed by Vendor, the Commonwealth's Relationship Manager shall deliver to the Vendor's Relationship Manager a written In-Scope Work Request that describes the Services that the Commonwealth desires to be performed, with sufficient detail to enable Vendor to readily understand and comprehend such request. Upon receipt of such an In-Scope Work Request, Vendor shall promptly take all necessary and appropriate action to perform the requested Services in accordance with such In-Scope Work Request (or, if no timetable for performance is specified therein, as soon as commercially reasonable), keeping the Commonwealth reasonably apprised of the status of such performance and notifying the

Commonwealth of when such In-Scope Work Request has been fulfilled or if any problems are encountered. If Vendor receives an In-Scope Work Request with regard to which there is some question or problem that prevents Vendor from complying with the procedure described above in this Section 6.4.1, then Vendor shall immediately contact, and discuss the matter appropriately with, the Commonwealth's Relationship Manager. The Parties understand and agree that all work requested in an In-Scope Work Requests shall be presumed to be within the scope of the Services and the Fees set forth in Schedule 10.1 hereto. The Parties shall also maintain a mutually agreed-upon change management procedure, which shall be included in the Procedures Manual.

6.4.2. Deemed In-Scope Work Requests

Notwithstanding anything to the contrary provided in Section 24 or elsewhere in this Agreement, if (i) the Commonwealth at any time during the Term requests services, products, or resources from Vendor and the Parties cannot agree as to whether such services, products, or resources are within the scope of the Services, and (ii) the financial impact on Vendor of satisfying such request is less than Twenty-Five Thousand Dollars (\$25,000.00), then to the extent that the cumulative and aggregate amount of all such services, products, or resources so provided does not result in a financial impact on Vendor in excess of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) during any Contract Year: (a) such failure to agree shall not be deemed a Disagreement; (b) such request shall be deemed an In-Scope Work Request; and (c) all such services, products, or resources shall be provided to the Commonwealth by Vendor in accordance with such In-Scope Work Request and the terms of this Agreement.

6.5 Out-of-Scope Work Requests

If the Commonwealth requires the performance of services that are not within the scope of Services described in this Agreement, and the Commonwealth does not deem it appropriate to designate such services as an Initiative, in accordance with this Agreement, the Commonwealth's Relationship Manager shall deliver to the Vendor's Relationship Manager an Out-of-Scope Work Request for a proposal to implement such change, specifying the proposed change with sufficient detail to enable Vendor to evaluate it. Within five (5) business days (or, if the requested change cannot reasonably be evaluated within such time period, then such longer period of time as mutually agreed by the Parties) after the date of such request, Vendor shall provide the Commonwealth with a written evaluation of such Out-of-Scope Work Request and a written proposal containing, at a minimum, the following: (i) reasonably detailed specifications, implementation plans (with implementation to commence not later than thirty (30) days after the Commonwealth's approval (if any) of such Out-of-Scope Work Request, unless otherwise mutually agreed by the Parties), work schedules, timeframes for performance, and acceptance criteria; and (ii) a firm price quote of the Fees that Vendor would charge to implement such Out-of-Scope Work Request, whether on a time-and-materials basis, at the hourly rates set forth in Schedule 10.1 for the applicable job classifications of the Vendor Personnel that would be performing the Services necessary for such implementation (the "Applicable Hourly Rates"). The proposal shall constitute Vendor's firm offer, irrevocable for ten (10) business days (or such longer period as stated in such proposal, the "Response Period"), to perform such services as described in such proposal upon the terms and conditions set forth therein. Prior to the

expiration of the Response Period, the Commonwealth's Relationship Manager shall notify Vendor in writing if the Commonwealth elects to accept Vendor's proposal and proceed with implementation of the Out-of-Scope Work Request upon the terms and conditions set forth therein (any such notice, a "Notice to Proceed"). If, within the Response Period, the Commonwealth gives notice to Vendor not to proceed, or fails to give any notice to Vendor, then Vendor's proposal shall be deemed rejected and the Out-of-Scope Work Request shall be deemed withdrawn, and Vendor shall take no further action with respect to either. Upon the Commonwealth's issuance of a Notice to Proceed during the Response Period, as described above, Vendor's proposal shall be deemed accepted by the Commonwealth and the terms and conditions thereof (as modified by written mutual agreement of the Parties in negotiations prior to issuance of such Notice to Proceed) shall be deemed to constitute such Out-of-Scope Work Request. Notwithstanding the foregoing, no Out-of-Scope Work Request, proposal, or Notice to Proceed shall become binding upon the Commonwealth, and the Commonwealth shall not be obligated to pay Vendor for any Services described in, or performed pursuant to, any such documents, unless and until the applicable Out-of-Scope Work Request related to a Notice to Proceed issued in accordance with the provisions of this Section 6.5 is signed by a duly authorized representative of each Party. All Out-of-Scope Work Requests shall be governed by the terms and conditions of this Agreement except as expressly specified otherwise by the terms of such Out-of-Scope Work Request. Out-of-Scope Work Requests must be executed by authorized representatives of the Parties to be valid.

6.6 Critical Milestones

6.6.1. General

The Parties recognize and agree that time is of the essence with regard to the accomplishment of those tasks and activities designated as Critical Milestones. Therefore, if Vendor fails, or if the Commonwealth reasonably determines that Vendor is likely to fail, to meet a Critical Milestone by the date corresponding thereto, as specified in Schedule 28.27, then, in addition to any other rights and remedies that may be available to the Commonwealth in accordance with this Agreement, Vendor shall, at the Commonwealth's option and at no additional cost to the Commonwealth, provide such additional personnel as may be required or necessary to accomplish all activities, tasks, and Services that were associated with such Critical Milestone either: (i) as soon as commercially practicable through Vendor's exercise of all commercially reasonable efforts, if Vendor has already failed to meet such Critical Milestone; or (ii) by the date corresponding thereto, as specified in Schedule 28.27, if such date has not yet passed. In addition, Vendor shall pay a Performance Credit in an amount equal to five percent (5%) of the Fees applicable to or associated with the Services directly related to the successful accomplishment of such Critical Milestone for each full week after the date corresponding to such Critical Milestone, as specified in Schedule 28.27, until such time as such Services have been completed, up to a maximum of fifty percent (50%) of the Fees for such Services. Such Performance Credits as are imposed by the Commonwealth pursuant to the immediately preceding sentence shall accumulate during the Term and, upon the Commonwealth's request, at any time, and from time to time, the cumulative and aggregate amount thereof then outstanding

shall be calculated and paid to the Commonwealth by Vendor in cash or, in the Commonwealth's discretion, credited to the Commonwealth against any Vendor invoice for Services rendered.

6.6.2. Withholding of Fees

In addition to the remedies described in Section 6.6.1, in the event that Vendor fails to meet a Critical Milestone, the Commonwealth shall be entitled to withhold any Fees corresponding to such Critical Milestone, or related to the activities, tasks, and Services that are associated with such Critical Milestone, until such time as Vendor, through the diligent exercise of all commercially reasonable effects, has successfully completed all such activities, tasks, and Services in accordance with this Agreement (except with regard to the date associated with such Critical Milestone).

6.7 Extraordinary Events or Circumstances

The Commonwealth may, at any time, and from time to time during the Term, and as a result of an extraordinary event or circumstance, including a Force Majeure Event, provide Vendor with written notice reasonably describing such event or circumstance and directing Vendor to temporarily perform Services in an extraordinary or unusual manner (e.g., perform services at levels above or below the Service Levels set forth in Schedule 3.12) for a specified period of limited duration. The Commonwealth may also, in such an event or circumstance, in its discretion, perform itself or obtain a third party to perform certain Services for the duration of such extraordinary event or circumstance, promptly informing Vendor thereof in writing. To the extent that any such action by the Commonwealth causes or results in an increase or decrease in the costs or expenses reasonably and directly incurred by Vendor in the performance of the affected Services, Vendor shall promptly provide the Commonwealth with written documentation substantiating such increase or decrease in the Fees, requesting the Commonwealth's attention to the matter, and the Commonwealth shall either promptly pay Vendor an amount equal to any such increase or promptly receive from Vendor a credit equal to the amount of any such decrease. Any such request by Vendor for such an adjustment of Fees must be asserted in writing within thirty (30) days after the date of Vendor's receipt of the Commonwealth's notice regarding such extraordinary circumstance or event, or, if such event or circumstance should continue unabated for more than thirty (30) days, within such additional period of time as the Parties may agree upon in writing. Pending the determination and resolution of any such adjustment, Vendor shall diligently proceed with performance of the requested, extraordinary Services. All adjustments made pursuant to this Section 6.7 shall be subject to the record-keeping requirements and audit rights set forth in Section 18.

6.8 Notice of Adverse Impact

Vendor shall promptly inform the Commonwealth in writing of any failures by Vendor to comply with its obligations under this Agreement, or any other situation, that Vendor is aware of that have resulted, or could reasonably result, in a material adverse impact on the (i) Services or the Commonwealth's operations, (ii) integrity of the Commonwealth's financial and other internal controls, or (iii) quality or accuracy of the Commonwealth's financial,

accounting and human resources records. The Commonwealth may assume that no such circumstances exist unless Vendor so notifies the Commonwealth.

7. ACCEPTANCE TESTING

All Deliverables shall be provided to the Commonwealth by Vendor in conformity with all requirements, Specifications, Acceptance Criteria, and time schedules set forth or referenced in this Agreement. Vendor shall at all times utilize complete and thorough Acceptance Testing Procedures, and appropriate Acceptance Criteria, all of which shall be subject to review and approval by the Commonwealth, and no such activities shall be deemed completed until all Acceptance Criteria, whether set forth in this Agreement or set forth in any Schedule hereto or otherwise mutually agreed upon by the Parties in writing, have been successfully met. In addition, the Commonwealth shall have the right to review, test, and either accept or reject, in accordance with the provisions of this Section 7, any Deliverable or System (or any particular or separable product, output, or result of the Services, or any portion or component thereof) provided by Vendor to the Commonwealth. Vendor shall provide the Commonwealth with written notification when each Deliverable or System is ready for such review and testing. Payment for any such Deliverable shall be made in arrears after the Commonwealth issues its Post-live Acceptance, if any, of such Deliverable, in accordance with the provisions of this Section 7 and Schedule 10.1. The procedures to be used by the Commonwealth in reviewing, and determining whether to accept or reject, any such Deliverable or System are set forth in this Section 7. Within thirty (30) days after the Effective Date, Vendor shall develop and present to the Commonwealth in writing, subject to the Commonwealth's reasonable approval, a process whereby the procedures set forth in this Section 7 shall be incorporated and sufficiently integrated with Vendor's performance of the Services.

7.1 Pre-Live Software Acceptance

Upon the Commonwealth's receipt of written notification that Vendor has completed the installation of a separable portion of a Deliverable, or of a System, that constitutes Software (each such portion of a Deliverable or of a System, a "Software Component") and that such Software Component is ready for testing, the Commonwealth shall begin testing such Software Component in a non-live environment using the Acceptance Test Procedures, to determine whether such Software Component performs in accordance with the Acceptance Criteria. After the Commonwealth has completed such testing for such Software Component and has operated such Software Component for sixty (60) consecutive calendar days (the "Pre-live Testing Period") in accordance with the Acceptance Criteria, the Commonwealth shall notify Vendor in writing that the Commonwealth has issued its "Pre-live Acceptance" of such Software Component. If the Commonwealth determines during such period that such Software Component does not perform in accordance with the Acceptance Criteria, the Commonwealth shall deliver to Vendor, within seven (7) calendar days after the end of the Pre-live Testing Period, a written report describing the deficiencies in reasonable detail. Vendor shall correct any such deficiencies within fifteen (15) calendar days after receiving any such report and shall notify the Commonwealth in writing when such corrections are completed. The Commonwealth may then re-test the Software Component for an additional Pre-live Testing Period of up to

forty-five (45) consecutive calendar days, at the end of which the determination, notification, and correction process described above in this Section 7.1 shall be repeated.

7.2 Post-Live Software Acceptance

Once the Commonwealth has issued its Pre-live Acceptance of all of the Software Components that constitute a particular Deliverable or System, the Commonwealth shall begin using such Deliverable or System in a live, operational environment (the date that such use commences, the “Go Live Date”). Once the Commonwealth has used the Deliverable or System in such live, operational environment for a sufficient time to test all functions of such Deliverable or System, and to ensure that such Deliverable or System is fully integrated with all other applicable Systems and with all applicable the Commonwealth Software and other relevant systems and Software of the Commonwealth, a period lasting no more than sixty (60) consecutive calendar days after the Go Live Date (“Live Testing”), and has determined that (i) there have been no material errors, (ii) the Deliverable or System performs in accordance with the applicable Acceptance Criteria, and (iii) all training Services required hereunder, and other Services required by this Agreement to have been completed by such time or occurrence, have been completed, then the Commonwealth shall notify Vendor in writing that the Commonwealth has issued its “Post-live Acceptance” of the Deliverable or System. In no event shall any other action or inaction by the Commonwealth, including the Commonwealth’s use of such Deliverable or System, or any portion thereof, in such a live, operational environment, constitute issuance by the Commonwealth of its Post-live Acceptance of such Deliverable or System or any portion thereof. Notwithstanding anything to the contrary elsewhere in the Agreement, in no event shall the Commonwealth’s issuance of its Post-live Acceptance of any Deliverable or System be deemed a waiver of any right or remedy available to the Commonwealth under this Agreement, at law, or in equity as a result of any defect in any Software Component or Deliverable not discovered by the Commonwealth during Pre-Live Testing or Live Testing.

7.3 Non-Software Acceptance

The Commonwealth shall also have the right to review and test each material Deliverable (or any particular or separable product, output or result of the Services, including the Systems or any portion or component thereof) provided by Vendor to the Commonwealth hereunder that is not a Software Component, in accordance with the procedures set forth in this Section 7.3. Upon receiving written notification from Vendor that such a non-Software Deliverable is ready for review and testing, the Commonwealth shall commence reviewing and testing such Deliverable (unless otherwise provided, for a period of time not to exceed twenty-one (21) consecutive calendar days) using the Acceptance Test Procedures to determine whether such Deliverable conforms to the applicable Acceptance Criteria, and whether the Commonwealth shall accept or reject such Deliverable. If the Commonwealth determines that such Deliverable does not conform to such Acceptance Criteria, the Commonwealth shall deliver to Vendor a written report describing the deficiencies in reasonable detail. Vendor shall correct any such deficiencies within fifteen (15) calendar days after receiving any such report and shall notify the Commonwealth in writing when such corrections are completed. The Commonwealth may then re-test the Deliverable for up to fifteen (15) additional consecutive calendar days, at the

end of which the determination, notification, and correction process described above in this Section 7.3 shall be repeated.

7.4 Failure to Achieve Acceptance

In the event that Pre-live Acceptance of a Software Component or a particular Deliverable or System as a whole, or Post-live Acceptance of such Deliverable or System as a whole, is not achieved within a reasonable period of time after commencement of Pre-live Testing or the Go Live Date, as applicable (such periods not to exceed one hundred eighty (180) and one hundred twenty (120) consecutive calendar days, respectively), or in the event that the process described in Section 7.3 with respect to any material Deliverable is not completed within one hundred twenty (120) consecutive calendar days after the Commonwealth first commences review and testing of such Deliverable, the Commonwealth shall have the right to declare such failure a Default and to seek the rights and remedies available to it under Section 16 hereof.

7.5 Omitted Test Criteria

Unless otherwise specifically provided in the Acceptance Test Procedures, the test for each Software Component shall include testing to the Commonwealth's reasonable satisfaction in each of the following regards: (a) unit testing (i.e., individual testing of each field, screen, screen-related action, and module or program); (b) system testing (i.e., testing of the Deliverable or System as a whole and its integration with the Commonwealth Software and other Systems of the Commonwealth); and (c) volume/stress testing (i.e., testing of the Deliverable or System under peak conditions to measure response time and system reaction to load).

8. PERSONNEL

8.1 Hiring of Personnel

8.1.1. Affected Employees

Vendor shall offer employment to Affected Employees in accordance with the requirements set forth in Schedule 8.1.

8.1.2. Managed Employees

During the Term, Vendor shall engage the Managed Employees for performance of the Services. The Managed Employees shall work under Vendor's direction and supervision during the Term. Vendor shall be responsible for any failure by the Managed Employees to perform in accordance with Vendor's obligations under this Agreement. In managing the Managed Employees, Vendor shall comply with all laws, rules, regulations and policies applicable to Commonwealth employees, including grievance procedures and payment schedules. Vendor shall be responsible for training, at its own cost, the Managed Employees in the same manner and to the same extent that Vendor trains the Vendor Personnel. Vendor shall reimburse the Commonwealth on a monthly basis for the cost to the Commonwealth of employing the Managed Employees during the Term and providing their services to Vendor

during the Term, including salaries, incentive compensation and fully-loaded benefits, as further set forth in Schedule 10.1. All Affected Employees that do not accept Vendor's offer of employment as of the Service Commencement Date shall be considered Managed Employees for the purposes of this Agreement.

8.1.3. Retained Personnel

Vendor agrees to offer employment to up to [_____] (___) of the Retained Personnel whom the Commonwealth desires to transition to Vendor and who are designated no later than the Service Commencement Date and who transition to Vendor within the [thirty-six (36) month] period beginning on the Service Commencement Date. Such offers of employment to such Retained Personnel shall be consistent with the requirements set forth in Schedule 8.1 for Affected Employees.

8.2 Vendor Personnel

8.2.1. Vendor's Relationship Manager

Vendor represents that the individual designated as Vendor's Relationship Manager in Schedule 8.2 attached hereto is, and promises that any replacement holder of such position shall be, an experienced manager who is knowledgeable as to the Commonwealth, its respective businesses, business practices, functions, and related activities, and its respective IT systems, requirements, and needs. The Commonwealth shall have the right to interview, as the Commonwealth deems necessary, and participate in the final selection of, Vendor's Relationship Manager. Without the prior written consent of the Commonwealth, which consent shall not be unreasonably withheld, Vendor shall not: (i) designate a replacement for Vendor's Relationship Manager; or (ii) voluntarily replace or reassign the individual serving as Vendor's Relationship Manager during the first eighteen (18) months after the date that such individual commences performing the duties of Vendor's Relationship Manager hereunder. Vendor's Relationship Manager shall at all times: (a) act as the primary liaison between Vendor and the Commonwealth's Relationship Manager; (b) have overall responsibility for directing all of Vendor's activities hereunder, directing the performance of all Services from inception through completion; (c) be vested with the necessary authority to fulfill all of the responsibilities of Vendor's Relationship Manager described in this paragraph, including the authority to agree to and execute amendments to this Agreement on behalf of Vendor, unless such authority has been previously and specifically limited by Vendor and Vendor has provided the Commonwealth with a writing evidencing such specific limitation; (d) coordinate the preparation of proposals and other responses to the Commonwealth's requests hereunder, business plans, proposed statements of work, Specifications, Acceptance Criteria, Acceptance Testing Procedures, operating budgets, and financial terms and conditions related to any additional work to be performed by Vendor under this Agreement; and (e) coordinate and conduct periodic program review sessions with the Commonwealth to discuss costs, schedules, and any relevant technical aspects of Vendor's performance under this Agreement.

8.2.2. Key Personnel

Vendor represents that the individuals and roles designated as Key Personnel in Schedule 8.2 attached hereto are, and promises that any subsequent Key Personnel shall be, experienced professionals, possessing the appropriate knowledge, skills, and expertise to perform properly their assigned duties. With regard to each of the Key Personnel, Vendor shall not, without obtaining the Commonwealth's prior written consent at least thirty (30) days in advance, at any time during the first [twelve (12) months] after the date that such individual commences performing Services as one of the Key Personnel hereunder: (i) replace or reassign such individual, if doing so would require the alteration or reduction of such individual's contribution to, or involvement with, the Services; or (ii) terminate the employment of such individual, except with regard to termination for "good cause" (which term, as used in this Agreement, means cause for termination as determined in accordance with Vendor's employment policies, consistently applied). Vendor shall not be required to obtain the Commonwealth's consent to any such replacement or reassignment if the function being performed by the individual being replaced or reassigned is eliminated from the Services. If any of the Key Personnel is reassigned, becomes incapacitated, or ceases to be employed by Vendor, and therefore becomes unable to perform the functions or responsibilities assigned to such person, Vendor shall promptly replace such person with another person at least as well qualified to perform such functions and responsibilities as the person being replaced, and the Commonwealth shall have the right to interview and approve each such replacement. The Parties acknowledge that qualifications include a mix of experience and education and that equally-qualified individuals may have different mixes thereof.

8.2.3. Additional Personnel Requirements

Vendor shall, at all times, make available appropriate and sufficient numbers and types of Vendor Personnel, in addition to Vendor's Relationship Manager and the Key Personnel, to timely perform Vendor's obligations hereunder, in accordance with this Agreement and all Schedules hereto, or as may otherwise be requested by the Commonwealth.

8.2.4. Vendor Management Commitment

From time to time during the Term, but on not less than once each Contract Quarter, Vendor shall present and discuss with the Commonwealth its current financial plans and operational plans related to this Agreement, and Vendor shall make its senior management personnel available to answer questions from the Commonwealth's senior management personnel regarding such plans. In addition, at the Commonwealth's request (not more frequently than once per Contract Quarter), the chief executive officers of Vendor and the Commonwealth shall meet to discuss the status and general progress of the performance by Vendor pursuant to this Agreement and all aspects of the Parties' relationship.

8.2.5. Qualified Personnel

Vendor warrants that each Vendor Person performing Services, providing Deliverables, or operating, supporting, or maintaining the Systems in connection with

this Agreement, has qualifications appropriate for the assigned position, duties, and responsibilities and shall perform such duties in accordance with, and meet the requirements set forth in, this Agreement as well as such additional requirements as the Commonwealth may specify from time to time. Vendor further warrants that each Vendor Person assigned by Vendor or its Subcontractors to perform Vendor's obligations under this Agreement shall possess: (i) experience, skills, training, and expertise appropriate for the assigned duties and responsibilities and at least equal to the highest commercial standards applicable to personnel performing similar or comparable duties and responsibilities in the business in which Vendor is engaged; and (ii) expertise, knowledge, and orientation with regard to the relevant and applicable aspects of the Services and the Systems, and of the Commonwealth, and their business practices and information systems, sufficient to enable him or her to properly and timely perform the duties and responsibilities assigned to him or her in connection with this Agreement. In no event shall the Commonwealth be required to pay any Fees with regard to any time spent in the performance of Services by any Vendor Person who does not meet all of the requirements of the preceding sentence. In the event that Vendor breaches any of its obligations with respect to the minimum required proficiency of any Vendor Person, as set forth in this paragraph, Vendor shall promptly, as directed by the Commonwealth (in its sole discretion), either: (i) take such action with respect to such Vendor Person, including promptly providing appropriate training, education, or orientation, as necessary for such Vendor Person to meet the applicable requirements set forth in this paragraph; or (ii) in the event that the Commonwealth has notified Vendor that such Vendor Person does not meet the applicable requirements set forth in this paragraph, remove and replace such Vendor Person with an appropriately qualified individual, in accordance with this Agreement.

8.2.6. Employee Qualification and Verification

Subject to and in accordance with applicable law, Vendor, prior to assigning an individual as a Vendor Person and at Vendor's sole expense, shall have appropriately verified the qualifications of such individual, including verifying employment history and performance, conducting reference checks, verifying technical training or education completed or degrees awarded, performing drug testing, conducting a security background check that includes investigation and identification of all state or federal misdemeanor or felony convictions of such individual, and criminal charges pending against such individual, during the immediately preceding seven (7) years, and performing such other types of verification as reasonably requested by the Commonwealth. The security background check described in the preceding sentence shall include an investigation of whether the individual has a history of workplace violence, such as threatening others or causing disturbances. At the request of the Commonwealth, Vendor shall promptly deliver a written certification to the Commonwealth that it has performed, and the subject individual has passed, such verification procedures as are set forth in this Section 8.2.6. The Commonwealth retains the right to audit the verification methods and processes, and results obtained, by Vendor in performance of its obligations under this Section 8.2.6 in those situations that the Commonwealth deems appropriate. Subject to compliance with applicable legal and regulations, the Commonwealth may reject the assignment of any Vendor Person based upon the results of the verification procedures set forth in this

Section 8.2.6, and Vendor shall promptly fill such position with an appropriately qualified person in accordance with this Agreement.

8.2.7. Specialized Personnel

If it is necessary, in connection with the performance of the Services, that Vendor Personnel or Subcontractors be assigned responsibilities in a Commonwealth Location (not including any Locations leased or subleased by Vendor from the Commonwealth) that requires special health, security, or safety training, then such training will be provided by the Commonwealth to such individuals and Vendor shall make such individuals reasonably available for such training, with each Party being responsible for its own costs associated with such training (i.e., among other things, Vendor shall not charge the Commonwealth any Fees for any amount of time spent by any of the Vendor Personnel or any Subcontractor attending or receiving such training).

8.2.8. Training

Vendor shall provide, and cause its Subcontractors to provide, all such technical and interpersonal training to the Vendor Personnel, and to any employees of Vendor's Subcontractors that are assigned to provide Services hereunder, as may be necessary and appropriate for them to collectively perform, on behalf of Vendor, all of Vendor's duties under this Agreement. In any event, the levels and extent of training provided by Vendor to the Vendor Personnel shall be at least equal to the average levels of training given to other Vendor employees holding comparable positions, under similar circumstances, and performing work of a similar nature and level of complexity.

8.2.9. Replacement of Personnel

Notwithstanding anything to the contrary contained elsewhere in this Agreement, if the Commonwealth believes that the performance or conduct of any Vendor Person or Subcontractor is unsatisfactory for any reason, or is not in compliance with the provisions of this Agreement, the Commonwealth may so notify Vendor and Vendor shall promptly (within no more than two (2) business days) and appropriately address the performance or conduct of such person, or, at the Commonwealth's reasonable request, immediately remove and replace such person with another person acceptable to the Commonwealth and meeting all of the applicable requirements described in this Section 8.1.

8.2.10. Hiring of Vendor Personnel

Subject to Vendor's written consent, the Commonwealth may, at any time and from time to time, during the Term and after termination thereof, offer employment to a select and limited number of Vendor's employees and employees of Vendor's Subcontractors (other than employees who are critical to Vendor's ability to perform the Services), to the extent the Commonwealth reasonably deems such employment necessary to ensure the successful management and coordination of the Commonwealth's receipt of the Services, or its use and operation of the Systems, and the proper execution of the Commonwealth's retained authority

hereunder. Vendor shall not, and shall cause its Subcontractors not to, interfere with, or otherwise take any action against either the Commonwealth or any such employees preventing, or discouraging the acceptance of, any such offers of employment.

8.2.11. Turnover Rate

Vendor shall use commercially reasonable efforts to maintain the turnover rate of Vendor Personnel and Managed Employees, respectively, under [] percent (%)] in any given Contract Year and otherwise to levels acceptable to the Commonwealth. Notwithstanding any turnover of Vendor Personnel and Managed Employees, Vendor remains responsible for performing the Services without degradation and in accordance with the Service Levels.

8.3 The Commonwealth's Relationship Manager

The Commonwealth's Relationship Manager shall: (i) act as the primary liaison between the Commonwealth and Vendor's Relationship Manager; and (ii) have overall responsibility for directing and coordinating all of the Commonwealth's activities hereunder, and shall be vested with all necessary authority to fulfill that responsibility. The Commonwealth's initial Relationship Manager is identified in Schedule 8.2 attached hereto.

8.4 Conflict of Interest

The Commonwealth's policies expressly prohibit it and its employees from engaging in activities involving a conflict of interest. Vendor shall not at any time during the Term of this Agreement employ or otherwise engage any Commonwealth employee for any purpose in any way related to Vendor's performance of its obligations hereunder. Vendor shall at all times exercise reasonable care and diligence to prevent any actions, circumstances, or conditions that could result in a conflict between Vendor (or any of its employees, agents, or Subcontractors, or any other third parties otherwise associated with performance of the Services hereunder) and the best interests of the Commonwealth. Such efforts by Vendor shall include establishing reasonable precautions to prevent its employees, agents, and Subcontractors from making, receiving, providing, or offering to any employees of the Commonwealth any gifts, entertainment, payments, loans, or other considerations that could appear to or be deemed to, or create the impression of an attempt to, influence individuals to act in a manner contrary to the best interests of the Commonwealth.

8.5 Non-Solicitation of Employees

Except as otherwise expressly provided in Section 8.2.10 and other specific provisions of this Agreement, during the Term and for the first twelve (12) months thereafter, neither Party shall, without the prior written consent of the other Party, directly or indirectly solicit, entice, encourage, or otherwise recruit any employee of such other Party whose duties and responsibilities include performing services directly or indirectly connected with performance under this Agreement to leave such other Party's employ in order to accept employment or other engagement with the soliciting Party, its Affiliates, actual or prospective

contractors, or any other Person. Notwithstanding the foregoing, the Parties acknowledge and agree that this Agreement shall not prohibit solicitations by either Party through general advertising or other publications of general circulation. In no way is this Section 8.5 intended, nor shall it be deemed, to restrict or limit any individual's right to seek employment, but rather this Section 8.5 is intended to, and shall, prevent each Party from actively recruiting and hiring the employees of the other Party, thereby depriving such other Party of vital resources, in the securing, development, training, and deployment of whom it has expended considerable time and resources.

9. AUTHORITY RETAINED BY COMMONWEALTH

The Commonwealth shall have and at all times retain the exclusive right and authority to: (i) define, determine, and control the Commonwealth's IT-related policies, strategies, objectives, and goals; (ii) define, determine, and alter any or all of the Commonwealth's business processes; (iii) define and prescribe design standards and architecture with regard to the IT platform and infrastructure for the Commonwealth, and the Locations; and (iv) assess Vendor's quality and performance. Vendor shall, at all times during the Term and during Disentanglement, perform and provide the Services in accordance with the strategies, processes, standards, and policies described in the immediately preceding sentence. The Commonwealth may consider, but shall have the right to approve or reject, in its discretion, any and all Vendor-proposed decisions with respect to any major or significant infrastructure-design, technical platform, architecture, or standards applicable to the Services or the Systems, or that could reasonably be expected to materially increase the Fees payable by the Commonwealth for the Services or to materially increase the costs incurred by the Commonwealth at any time in operating its business, and the Commonwealth shall also have the right and authority to cause Vendor at any time to change any or all of the foregoing. The Commonwealth shall also have the exclusive right and authority: (i) to order move, add, and change activity with respect to resources used in connection with Vendor's provision of the Services; and (ii) to designate the Commonwealth's requirements for applications development or enhancement activities with regard to the Systems or Commonwealth Software. Moreover, Vendor shall be required to obtain the prior, written authorization of VITA before: (i) undertaking any activity that is within the exclusive authority of the Commonwealth to order, request, or designate pursuant to the terms hereof; (ii) using in the performance of the Services, or otherwise incorporating or introducing into the Commonwealth's IT environment, any proprietary software or other technology that materially increases, or might reasonably be expected to increase, the cost to the Commonwealth in using, operating, supporting, or maintaining the Systems in comparison to the cost that the Commonwealth would otherwise incur in such activities (including any incremental costs associated with procuring applicable licenses to any Vendor-proprietary software or technology that is transferred to the Commonwealth during or as a result of a Disentanglement in comparison to the costs that the Commonwealth would have incurred by obtaining other functionally comparable or equivalent, commercially available software or technology).

10. FINANCIAL TERMS

As full remuneration, and the sole and entire financial consideration, for Vendor's performance of all of the Services, provision of the Deliverables, operation, support, and

maintenance of the Systems, furnishing of the Vendor Personnel and required materials, addressing and resolving any Disagreements or difficulties that may arise or are encountered, and performance of all of the other tasks, activities, services, duties, and obligations of Vendor under this Agreement, and for assuming all related risks, the Commonwealth shall pay to Vendor the Fees, in accordance with this Section 10.

10.1 Fees

10.1.1. General

The Commonwealth shall pay Vendor the Fees for the Services actually performed by Vendor in accordance with the terms and conditions of this Agreement and Schedule 10.1 attached hereto. Except as otherwise expressly provided in Section 15.1, Vendor shall not be entitled under this Agreement to any additional or separate compensation or reimbursement, other than the Fees expressly set forth in the Schedule 10.1, for the performance of Services, for any costs or expenses incurred in connection with performance hereunder, for any transition fees or exit fees, or for any other type or form of fees or reimbursement. Unless otherwise agreed, System changes, changes in the Services (including changes in the Commonwealth's technologies, architectures and standards) and changes in the rights or obligations of the Parties under this Agreement (collectively, "Contract Changes") shall result in changes in the applicable Fees only if and to the extent (i) the Agreement expressly provides in Schedule 10.1 for a change in the Fees in such circumstances or the pricing methodology expressly provides for a price change in such circumstances (for example, a Baseline Volume for the Resource Unit in question with ARCs and RRCs for increased or decreased usage); or (ii) the Contract Change meets the definition of an Initiative for purposes of Section 11 or the requirements of Section 6.5, respectively, and additional Fees are applicable in accordance therewith.

10.1.2. Eligible Customer Services

From time to time during the Term, the Commonwealth may request that Vendor provide Services to Eligible Customers not previously receiving such Services. Except as provided under the definition of an Initiative for purposes of Section 11 or the requirements of Section 6.5, respectively, such Services shall be performed in accordance with the terms, conditions and prices (excluding any non-recurring transition or start-up activities specific to such Eligible Customers) then applicable to the provisions of the same Services to existing Eligible Customers.

10.2 Most-Favored Customer

10.2.1. Best Prices

Vendor's charges to the Commonwealth for the Services shall be competitive with, or more customer-favorable than, Vendor's charges for similar services to Vendor's most favored customers (i.e., those customers to whom Vendor charges its lowest prices), purchasing similar volumes of such services under similar circumstances. For purposes

of the immediately preceding sentence: (i) the circumstances to be considered in determining what constitutes “similar services” are the technology base used by the customer, the specific combination of services required by the customer, the time period during which services are provided, and the overall revenue stream generated by the customer, taking into account the term of the underlying agreement; and (ii) no distinction shall be made between Vendor’s customers that are private entities and those that are in the public sector. If Vendor offers to any such customer similar services at similar (or lesser) volumes and at a price materially lower or a discount materially greater than the applicable Fees charged to the Commonwealth hereunder, then such Fees shall simultaneously be lowered by Vendor to the extent necessary to match such lower price or greater discount (or, to the extent such Fees have already been paid, Vendor shall promptly refund to the Commonwealth the difference between the Fees already paid and the lower price for the time period during which such lower price has been in effect). Vendor shall notify VITA of the occurrence of such a lower price or greater discount as described in this Section 10.2 within thirty (30) days after Vendor’s offering or providing such lower price or greater discount to another such customer. From time to time, but in any event no more than once annually, Vendor’s Chief Financial Officer shall, upon written request from the Commonwealth, promptly certify in writing that Vendor is in compliance with this Section 10.2. Nothing herein shall require that Vendor disclose to the Commonwealth, or to the Commonwealth’s Auditors, accountants, or attorneys, any information that Vendor is legally prohibited, by contract, statute, or otherwise, from disclosing to the Commonwealth, regardless of the existence of any dispute pertaining to this Section 10.2.

10.2.2. Periodic Price Review

Vendor and Key Subcontractors shall have their respective auditors conduct annual audits assessing the methods used to determine the best prices as described in Section 10.2.1 and the adequacy of control over invoices submitted to the Commonwealth. In addition, at the Commonwealth’s option and cost, the Commonwealth may, subject to Vendor’s confidentiality obligations under Vendor’s other customer contracts, have the Commonwealth’s Auditors conduct an independent, confidential third party audit to review the process Vendor uses to determine its best prices, as described in Section 10.2.1.

10.3 Invoices

10.3.1. Vendor Invoices

Vendor shall invoice the Commonwealth in arrears for the Fees in accordance with the provisions of Schedule 10.1, but in no event more frequently than once per month. Credits and adjustments (i.e., Performance Credits, ARCs, and RRCs) for any given month will be applied against the next monthly invoice after the invoice for such month. For example, Vendor’s December, 2006, invoice will include Fees for Services performed during November, 2006, and any credits or adjustments applicable to Services performed in October, 2006. Each such invoice shall be in the format shown in Exhibit 10.3 hereto (or such other reasonable format as specified from time to time by the Commonwealth) and, with respect to the Fees, credits, adjustments or the timeframe to which such invoice is applicable, shall set forth in reasonable detail: (a) an itemized accounting of the Fees and any applicable credits and

adjustments; (b) the Services performed (e.g., each particular activity or task); (c) the identity of the Vendor Personnel performing such Services; (d) with respect to any Services billed on an hourly or time-and-materials basis, the number of hours and corresponding Fees attributable to each such Vendor Person's performance of such Services; (e) to permit the Commonwealth to chargeback internally to the Eligible Customers at the same organization level and same level of detail in use by VITA as of the Effective Date; and (f) any other information or data necessary to support such Fees, credits, and adjustment. Any improperly formatted invoices may be returned by the Commonwealth for correction and resubmission.

10.3.2. Eligible Customer Invoices

If requested by VITA, Vendor shall also prepare separate invoices for each Eligible Customer then receiving Services, allocated among such Eligible Customers based on the chargeback data and information generated by Vendor and/or the allocation formula provided by VITA. Each such separate invoice shall otherwise comply with the requirements of Section 10.3.1. Further, Vendor shall perform all Services related to the operation and implementation of the Chargeback System and the Commonwealth's process for chargeback (related to chargeback for the Services and otherwise) to the Eligible Customers as further described in the Statements of Work.

10.3.3. Payment by Commonwealth

The Commonwealth (or the applicable Eligible Customer, if the Commonwealth has elected separate invoices pursuant to Section 10.3.2) shall pay Vendor all undisputed amounts set forth in invoices properly issued in accordance with this Section 10, within forty-five (45) days after the Commonwealth's receipt thereof. The Commonwealth (or the applicable Eligible Customer) may, however, withhold payment of any invoiced amounts that the Commonwealth (or the applicable Eligible Customer) disputes in good faith in accordance with Section 10.5, pending resolution of the matter. All payments by the Commonwealth shall be made by wire transfer, unless the Parties mutually agree in writing to an alternative form or method of payment. For avoidance of doubt, the Commonwealth's obligation to pay any portion of an invoice issued to the Commonwealth that relates to Services received by an Eligible Customer is subject to the Commonwealth having received a corresponding payment of such amount from such Eligible Customer.

10.3.4. Payment of Subcontractor Invoices

Within seven (7) days following Vendor's receipt of payment from the Commonwealth, Vendor shall pay all Subcontractor(s) performing Services under this Agreement for the proportionate share of the payment received for Services performed by the Subcontractor(s) hereunder. Vendor shall notify VITA and the applicable Subcontractor(s), in writing, of any intention to withhold payment to such Subcontractor(s) and the basis for such withholding. Any obligation of Vendor to pay interest to a Subcontractor on any amounts owed to such Subcontractor shall not be construed to be an obligation of the Commonwealth.

10.4 Set-Off

The Commonwealth may set off against any and all amounts otherwise payable to Vendor pursuant to any of the provisions of this Agreement: (i) any and all amounts claimed by the Commonwealth in good faith to be owed by Vendor to the Commonwealth pursuant to any of the provisions of this Agreement; and (ii) any and all amounts claimed by the Commonwealth in good faith to be owed by Vendor pursuant to any other written agreement between the Parties. Within twenty (20) days after any such set-off by the Commonwealth, the Commonwealth shall provide Vendor with a written accounting of such set-off and a written statement of the reasons therefor.

10.5 Disputed Amounts

The Commonwealth may withhold payment of Fees or any other charges otherwise due to Vendor under this Agreement to the extent that the Commonwealth disputes such charges in good faith. In such case, the Commonwealth shall provide to Vendor a reasonably detailed written explanation of the basis for the dispute and shall continue to make payments of undisputed amounts as otherwise provided in this Agreement. If any disputed amounts are later determined to have been improperly withheld (i.e., properly charged by Vendor), then the Commonwealth shall be obligated to pay the withheld amount plus Interest thereon from the original due date applicable to such amounts, in accordance with this Agreement, until paid in full. If any paid amounts are later disputed by the Commonwealth and determined to have been improperly paid (i.e., improperly charged by Vendor), then Vendor shall promptly pay the Commonwealth, in cash, the improperly paid amount, plus Interest thereon from the original date paid. The failure of the Commonwealth to withhold payment shall not waive any other rights the Commonwealth may have with respect to disputed amounts or overpayments. Except as otherwise provided herein, any dispute relating to amounts owed by a Party hereunder shall be considered a Disagreement.

10.6 Taxes

Sales to the Commonwealth are normally exempt from state sales tax. State sales and use tax certificates of exemption, form ST-12, are available online at <http://www.tax.virginia.gov>. Deliveries against this Agreement shall usually be free from federal excise and transportation taxes. The Commonwealth excise tax exemption registration number is 54-73-0076K. Subject to the preceding sentences of this Section, the Fees shall be inclusive of all taxes imposed with respect to the provision of the Services hereunder, including any sales, use, excise, value-added, services, consumption, or other tax; provided, however, that the Commonwealth shall not be responsible for, and the Fees shall not include, any taxes imposed on or arising from the following: (i) charges for goods and services provided by the Commonwealth to Vendor in connection with this Agreement; (ii) Vendor's consumption of goods and services in connection with this Agreement; (iii) Vendor's income, revenue or property; (iv) any franchise or privilege taxes; or (v) employment-related taxes applicable to Vendor's employees and Subcontractors. The Parties agree to cooperate with each other to more accurately determine its own tax liability and to minimize such liability to the extent legally permissible.

10.7 Time Limitation

The Commonwealth shall have no obligation to pay any amount for which Vendor fails to provide the Commonwealth with an invoice within [ninety (90) days] after the month in which the relevant Services were rendered or the expense incurred. Vendor waives any right it may have to invoice or collect such amounts.

10.8 Benchmarking

With the Commonwealth's direction and cooperation, and as part of the Services, Vendor shall conduct a continuing benchmarking program of the Services, taking into consideration adjustments for reasonably comparable elements of the Services, that shall enable the Commonwealth to compare the Fees and Service Levels set forth in this Agreement with, and ensure that said Fees and Service Levels are similar in price and quality to, similarly bundled service offerings (accounting for the scope, service levels, term, and volume of business) of other best-in-class IT service-providers. The Commonwealth may request such a benchmarking for any one or more of the Services at any time during the Term. The Commonwealth may request a benchmarking for all Services not more than once during any period of twelve (12) consecutive months during the Term. The Commonwealth shall engage the benchmarking firm (each such firm, the "Benchmarking Firm") that is to complete any such benchmarking, provided that the firm selected by the Commonwealth shall be one of those Persons set forth on Schedule 10.8, or selected through the process described in such Schedule, and such Person shall execute a non-disclosure agreement reasonably satisfactory to Vendor. The Benchmarking Firm shall not exclude from the benchmarking any data related on the basis that the entity receiving the particular service offering is a private entity and not in the public sector. Vendor shall cooperate with any Benchmarking Firm and shall reimburse the Commonwealth for one-half of all fees and charges paid to the Benchmarking Firm relating to the benchmark. The Benchmarking Firm shall provide written reports on the benchmarking to both Vendor and the Commonwealth. If, as a result of any such benchmarking, the Benchmarking Firm determines that Vendor's Fees, taken in the aggregate with respect to all of the Services included in such benchmarking (based upon appropriate weighting of the respective Services for dollar volumes of Fees paid by the Commonwealth for each Service), are not at least as customer-favorable as the best twenty-five percent (25%) of the prices associated with similarly bundled service offerings (accounting for the scope, service levels, term, and volume of business) of other best-in-class IT service-providers (the "Benchmark Standard"), Vendor shall promptly adjust the Fees to eliminate any customer-unfavorable variance from the Benchmark Standard. Each Party shall have the right to advise any Benchmarking Firm of any information or factors it deems relevant to the conduct of the benchmark, so long as such information is disclosed to the other Party. If, as a result of a benchmarking, the Benchmarking Firm determines that the Service Levels are less favorable to the Commonwealth than the best Service Levels that comparable entities are then obtaining at comparable prices, then Vendor shall promptly adjust the relevant Service Levels so as to match said more favorable Service Levels. Any such adjustment to the Fees and Service Levels shall retroactively take effect as of the date that the first benchmark used in determining such adjustment was conducted and shall be reflected in no later than the second invoice provided by Vendor to the Commonwealth hereunder after the results of the last

benchmark used in determining such adjustment become available. Vendor shall include with any invoice in which such an adjustment is made a detailed description of such adjustment and an accounting of its application to Fees invoiced. Notwithstanding the foregoing, in no event shall the benchmarking process described in this Agreement result in an increase in Fees or a decrease in Service Levels.

10.9 Availability of Funds

Each payment obligation of the Commonwealth is contingent upon the appropriation or allocation of sufficient government funds for the payment of such an obligation. If funds are not allocated or available to any or all of the Eligible Customers for the continuance of the function performed by any of the Deliverables, products, or Services of Vendor, or any portion thereof (e.g., a Tower or subcomponent), then such Deliverables, products, and Services, to the extent directly or indirectly involved in the performance of such function, may be terminated by the Commonwealth at the end of the period for which funds are available, pursuant to Section 14.7. The Commonwealth shall notify Vendor of any such Deliverables, products, or Services that will or may be affected by such a shortage of funds as soon as commercially reasonable after first learning thereof. No penalty shall accrue to the Commonwealth in the event the Commonwealth exercises its rights provided by this Section 10.9, and in no event shall the Commonwealth be obligated or liable for any future payments of any kind (including any Fees) with respect to such terminated Deliverables, products, or Services, or for any damages or costs incurred by Vendor as a result of such a termination. In addition, if funds are not so allocated or available to an Eligible Customer, the Parties may mutually agree to undertake alternative actions, such as establishing lower Fees for the Services to such Eligible Customer or continuing performance of the Services but in a manner not subject to the Service Levels or subject to different Service Levels.

10.10 Payment upon Termination

Vendor shall submit a final completion cost or credit invoice upon (but in no event later than one hundred eighty (180) days after any final audit performed by Vendor's Auditors, subject to review and audit by the Commonwealth, regarding performance and outstanding payment obligations under this Agreement) any termination of the Term by the Commonwealth for convenience, pursuant to Section 14.2, for change in control of Vendor, pursuant to Section 14.3, or for a lack of funds, pursuant to Section 14.7 hereof. Upon approval of such final invoice, and subject to Vendor's compliance with all material terms and conditions of this Agreement, the Commonwealth shall promptly make payment of any remaining amounts due and payable to Vendor for Services rendered.

10.11 Customer Service Number

Vendor shall provide for use by the Commonwealth, and conspicuously print on each of Vendor's monthly invoices to the Commonwealth, a toll-free telephone number for billing-related questions, inquiries, or requests for adjustments. The Vendor Personnel assigned to answer and respond to such questions, inquiries, or requests shall be fully familiar and conversant with the Services, the Fees structure, and the terms and conditions of this Agreement.

10.12 Resource Charges and Credits

For each month during the Term, Vendor shall calculate the quantity of Resource Units utilized by the Commonwealth during that month and report such quantity to the Commonwealth in accordance with the format described in Section 17.1, together with the supporting information and documentation required under such Section. Each month, Vendor shall calculate any ARCs and RRCs, and the Commonwealth shall pay any such ARCs and Vendor shall pay or credit (or refund, if the Term has ended) any such RRCs, each in accordance with the terms and conditions of this Agreement and as set forth in Schedule 10.1.

10.13 Performance Credits

Schedule 3.12 sets forth specified Performance Credits that shall be granted to the Commonwealth if and when Vendor's actual performance of Services fails to meet certain levels, as measured against the Service Levels. It is understood that Performance Credits are intended to reflect, to some extent, the diminished value of Vendor's Services in the applicable events, but are not intended to constitute penalties or liquidated damages. In no event shall Performance Credits be the Commonwealth's sole and exclusive remedy with respect to any failure of Vendor to comply with applicable Service Levels or performance requirements.

10.14 Shared Savings

Without adversely affecting the Service Levels or causing any other material and adverse result, and without any increase in overall cost to the Commonwealth, Vendor shall continuously use all commercially reasonable efforts to optimize efficiency and cost-effectiveness of the performance of the Services and the use, operation, support, and maintenance of the Systems, thereby increasing the cost savings and return accruing to the Commonwealth as a result of this Agreement (collectively, the "Savings"). Vendor shall reasonably quantify, measure, track, and document all such Savings and report and present them to the Commonwealth in reasonable detail, accompanied by supporting documentation, in accordance with Schedule 17.1 and the provisions of this Agreement, but in no event more frequently than once every six (6) months except as otherwise agreed to by the Parties. At such time as Vendor presents the Savings realized for the past (6) months (or other appropriate period) to the Commonwealth, Vendor shall also present a detailed plan showing any reasonable actions or changes that are planned through at least the end of the next Contract Year in order to generate or realize even further Savings. Subject to the Commonwealth's reasonable approval, Vendor shall proceed to timely implement such plan. All activities pursuant to this Section shall be coordinated with the activities of the Cooperative Value and Innovation Team (which is further described in Schedule 6.3 hereto).

10.15 Paradigm Technological Shift

If a revolutionary, material shift and improvement occurs in the technology available to provide any type of IT-related services that constitutes a substantial portion of the Services, and if such technology is generally available (and available to Vendor), is outside the normal evolution of technology experienced by the IT industries, and was not generally available

as of the later of the Effective Date or the latest amendment to this Agreement (if any) pursuant to this Section 10.15, such improvement shall be deemed a “Paradigm Technological Shift.” If a Paradigm Technological Shift occurs, and if the Commonwealth requests an amendment pursuant to this Section 10.15, this Agreement shall be reasonably, appropriately, and equitably amended (including the Fees, Statements of Work, and all other relevant provisions) to take such Paradigm Technological Shift into account.

11. INITIATIVES

11.1 Request and Proposal Process

The Commonwealth may at any time, and from time to time, request that Vendor perform an Initiative for the Commonwealth with reasonable advance written notice that includes a reasonably detailed specification of the nature, extent, and desired timeframe for the work to be performed. Within a reasonable period (not to exceed twenty (20) days) after receiving such a request from the Commonwealth, Vendor shall prepare and submit to the Commonwealth a written proposal that: (i) assesses the expected impact of such request on any Services or Deliverables then being provided hereunder; (ii) defines and describes how Vendor would fulfill or satisfy such request, and describes any additional Services and Deliverables to be provided by Vendor pursuant thereto; (iii) sets forth cost estimates, specifications, implementation plans, and time schedules (with appropriate milestone and completion dates) anticipated by Vendor in connection with fulfilling such request; (iv) contains proposed completion and acceptance criteria; (v) sets forth any proposed Service Levels for new Services that would result from the Initiative; and (vi) sets forth any other information requested by the Commonwealth or that Vendor otherwise considers appropriate for inclusion. If the Commonwealth deems such proposal acceptable, and so notifies Vendor by a written purchase order executed by a duly authorized officer of the Commonwealth, then Vendor shall perform such work at the time-and-materials rates specified for Initiatives in Schedule 10.1 (unless another rate structure is also offered in the proposal and is accepted by the Commonwealth). If the estimated cost of an Initiative exceeds \$ [REDACTED], then Vendor shall, as part of the written proposal, provide a fixed price or a fixed rate per unit of performance (or other benefit to be received by the Commonwealth) for such Initiative, unless otherwise agreed by the Commonwealth, in either case at prices or rates no greater than the applicable or equivalent rates specified for Initiatives in Schedule 10.1 or, if no such applicable or equivalent rates are set forth therein, then based upon the best or lowest (i.e., the most customer favorable) prices or rates offered by Vendor to its other customers for services of a similar nature and scope. Each Initiative shall be deemed in all respects to be “Services” under this Agreement, and shall be subject to and governed by the terms and conditions of this Agreement, except to the extent that such terms are inconsistent with terms expressly agreed to by the Parties in writing with regard to such Initiative pursuant to this Section 11.1.

11.2 Cooperation and Coordination

With respect to each Initiative as to which Vendor is not selected to be the sole or principal provider, or that otherwise involves or requires the participation of third-party service-providers, Vendor shall at all times fully cooperate and coordinate with all such

service-providers in every respect to facilitate the successful accomplishment of the Initiative, including all aspects thereof or related thereto that are the responsibility of such third-party service-providers, provided that such third-party providers comply in all material respects with Vendor's reasonable technical and confidentiality requirements and to the extent that the Vendor Personnel that are assigned to perform the Services can reasonably accomplish such cooperation and coordination without materially and adversely affecting the Service Levels or other material aspects of the performance of the Services (including the quality and continuity thereof). Such cooperation and coordination shall include: (i) providing information concerning the Systems, data, computing environment, and the technology direction used by Vendor in providing the Services; (ii) cooperating with such third parties in the implementation and integration of the Initiative in the Commonwealth's environment; (iii) providing access to and use of Vendor resources; and (iv) performing tasks assigned to Vendor in connection with the Initiative. If Vendor is required to provide material assistance by Vendor Personnel outside the scope of Services, the Commonwealth shall pay Vendor, in the absence of mutual written agreement to the contrary, for such assistance based upon the applicable rates for Initiatives set forth in Schedule 10.1, provided that Vendor notifies the Commonwealth in writing of such required assistance and receives the Commonwealth's written authorization therefor prior to rendering such assistance. Vendor shall not be required to provide, and the Commonwealth shall not be required to pay for, such material assistance absent such authorization. Vendor acknowledges that the Commonwealth has the right to solicit or accept bids on the same work as proposed for any Initiative from any other provider and that the Commonwealth may award all or any portion of the work that was proposed for any Initiative to any such bidder for any reason. Notwithstanding the foregoing, Vendor's performance under this Agreement shall be excused to the extent that any such third-party service-provider selected by the Commonwealth commits any act or omission that materially and adversely affects Vendor's ability to provide the Services or to meet the Service Levels, provided Vendor could not have foreseen, prevented, or avoided such failure, or promptly mitigated the effects of such failure, without expending a material amount of additional time, resources, or cost and that : (i) Vendor immediately notifies the Commonwealth of such circumstances and its inability to perform under such circumstances, (ii) Vendor provides the Commonwealth with every reasonable opportunity to have such circumstances corrected and thereby avoid such Vendor non-performance, and (iii) Vendor uses commercially reasonable efforts to perform notwithstanding the circumstances.

12. PROPRIETARY RIGHTS

12.1 Commonwealth Works

12.1.1. Ownership by the Commonwealth

All Commonwealth Works, and all modifications or derivatives of such Commonwealth Works, including all Intellectual Property Rights in or pertaining to the same, shall be owned solely and exclusively by the Commonwealth.

12.1.2. License Grant to Vendor

As of the Services Commencement Date, the Commonwealth hereby grants, and Vendor hereby accepts, a limited, non-exclusive, non-transferable, royalty-free right and license to use the Commonwealth Works during the Term, to the extent necessary and appropriate for the sole purpose of Vendor's performing the Services, providing the Deliverables, and operating and supporting and maintaining the Systems, subject to, and as provided for by, the terms and conditions of this Agreement. Vendor acknowledges that the Commonwealth Works represent the valuable, intellectual property of the Commonwealth (or licensors). To the extent necessary for Vendor to provide the Services, such license grant extends to Subcontractors designated by Vendor that sign a written agreement to be bound by all of the terms contained herein applicable to the Commonwealth Works. Vendor and its Subcontractors shall not (i) use any of the Commonwealth Works for the benefit of any Person other than the Commonwealth, or (ii) reverse assemble, reverse engineer, translate, disassemble, decompile any of the Commonwealth Works without the prior written approval of the Commonwealth, which may be withheld in the Commonwealth's sole discretion.

12.2 Vendor Works

12.2.1. Ownership by Vendor

All Vendor Works, and all modifications or derivatives of such Vendor Works, including all Intellectual Property Rights in or pertaining to the same, shall be owned solely and exclusively by Vendor.

12.2.2. License Grant to the Commonwealth

As of the Effective Date, Vendor hereby grants, and the Commonwealth hereby accepts, for the benefit of the Commonwealth and any third-party providers of services to the Commonwealth, a perpetual, non-exclusive, worldwide, fully paid, royalty-free license to access, use, modify, copy, adapt, display, perform and create derivative works of, the Vendor Works to the extent necessary for the Commonwealth to receive the full benefit of the Services during the Term and any period of Disentanglement, and thereafter solely for internal business purposes of the Commonwealth, and not for commercial exploitation or resale.

12.3 New Works

12.3.1. Ownership by the Commonwealth

All Work Product, including all Intellectual Property Rights in or pertaining to the same, shall be owned solely and exclusively by the Commonwealth. Vendor (1) agrees that all copyrightable aspects of such Work Product shall be considered "work made for hire" within the meaning of the Copyright Act of 1976, as amended, (2) hereby assigns to the Commonwealth exclusively all right, title, and interest in and to all Intellectual Property Rights in and to such Work Product that it may have or obtain, without further consideration, free from any claim, lien for balance due, or rights of retention thereto on the part of Vendor, and

(3) acknowledges that the Parties do not intend Vendor to be a joint author of such Work Product within the meaning of the Copyright Act of 1976, as amended, and that in no event shall Vendor be deemed a joint author of such Deliverable.

12.3.2. Embedded Vendor Works

To the extent that any Vendor Works are incorporated into, embedded in or made part of the Work Product, notwithstanding Section 12.3.1 to the contrary, Vendor shall not be deemed to have assigned its Intellectual Property Rights in such Vendor Works to the Commonwealth, but Vendor hereby grants to the Commonwealth, for the benefit of the Commonwealth and any third-party providers of services to the Commonwealth, a perpetual, non-exclusive, worldwide, fully paid, royalty-free license to access, use, modify, copy, adapt, display, perform and create derivative works of, such Vendor Works to the extent necessary for the Commonwealth to receive the full benefit of its ownership of the Work Product.

12.3.3. License Grant to Vendor

Subject to the Commonwealth's Intellectual Property Rights in the Work Product, the Commonwealth hereby grants, and Vendor hereby accepts, a limited, non-exclusive, non-transferable, royalty-free right and license to use the Deliverables during the Term, to the extent necessary and appropriate for the sole purpose of Vendor's performing the Services, providing other Deliverables, and operating and supporting and maintaining the Systems, subject to, and as provided for by, the terms and conditions of this Agreement. To the extent necessary for Vendor to provide the Services, such license grant extends to Subcontractors designated by Vendor that sign a written agreement to be bound by all of the terms contained herein applicable to the Deliverables. Vendor and its Subcontractors shall not (i) use any of the Work Product for the benefit of any Person other than the Commonwealth, or (ii) reverse assemble, reverse engineer, translate, disassemble, decompile any of the Work Product without the prior approval of the Commonwealth, which may be withheld in the Commonwealth's sole discretion.

12.3.4. Intellectual Property Protection

Vendor shall promptly and fully disclose and deliver all Work Product to the Commonwealth, in writing (and, with respect to any Software Component, in both source code and object code form), together with all appropriate user manuals and all other Documentation necessary and sufficient to initially satisfy all of Vendor's related obligations under this Agreement (including the warranties set forth in Section 21.1.3) with respect to such Work Product. Vendor shall execute and deliver any and all patent, copyright, and other applications, assignments, and other documents or instruments that the Commonwealth reasonably requests for securing and protecting the Work Product and all Intellectual Property Rights therein or pertaining thereto. The Commonwealth shall have the sole and exclusive power to file and prosecute such applications and other documents and to take all other similar action concerning the Work Product or their protection. As requested by the Commonwealth, Vendor shall promptly and fully cooperate in a lawful manner with the Commonwealth (or any third parties designated by the Commonwealth), at the expense of the Commonwealth, in the

preparation and prosecution of all such applications and other documents and in any legal actions and proceedings concerning the Work Product.

12.4 Third Party Works

12.4.1. License Grant to Vendor

Subject to Vendor having obtained any Required Consents, and solely to the extent of the Commonwealth's underlying rights, the Commonwealth hereby grants, and Vendor hereby accepts, a limited, non-exclusive, non-transferable, royalty-free right and license to use the Third Party Works during the Term, to the extent necessary and appropriate for the sole purpose of Vendor's performing the Services, providing the Deliverables, and operating and supporting and maintaining the Systems, subject to, and as provided for by, the terms and conditions of this Agreement. To the extent necessary for Vendor to provide the Services, such license grant extends to Subcontractors designated by Vendor that sign a written agreement to be bound by all of the terms contained herein applicable to the Third Party Works. Vendor and its Subcontractors shall not (i) use any of the Third Party Works for the benefit of any Person other than the Commonwealth, or (ii) reverse assemble, reverse engineer, translate, disassemble, decompile any of the Third Party Works without the prior written approval of the Commonwealth, which may be withheld in the Commonwealth's sole discretion.

12.4.2. License Grant to the Commonwealth

Unless otherwise provided in this Agreement or expressly and mutually agreed to by the Parties in writing, Vendor shall not implement or utilize any Third-Party Works in the provision of any Services unless Vendor shall have secured for the Commonwealth a perpetual, non-exclusive, royalty-free, fully paid-up, worldwide license to use or receive the benefit of such Third-Party Works as necessary and appropriate for the proper conduct of the Commonwealth's business. Further, Vendor shall not embed any Third-Party Works in any Work Product, or create a derivative work of any Third-Party Work as Work Product, without the express, prior written consent of the Commonwealth. At the Commonwealth's direction, in the event of a request for such consent by Vendor, Vendor will attempt to negotiate such rights and other concessions regarding such works or modifications for the benefit of the Commonwealth, as the Commonwealth may request. In the event that Vendor is required by this Agreement, or requested or directed by the Commonwealth in accordance with this Agreement, to implement, set up, configure, or otherwise prepare any Third-Party Works for use by the Commonwealth or for use by Vendor in performing the Services:

(a) Subject to the rights of the applicable Third Party, the Commonwealth shall be the sole and exclusive owner of all Intellectual Property Rights in and to any Work Product that is the output of, or otherwise results from, such implementation, set up, configuration, and other preparation efforts;

(b) Vendor shall deliver to the Commonwealth comprehensive Documentation of such output or results, promptly upon completion thereof;

(c) In any event, unless otherwise provided herein, Vendor shall use all commercially reasonable efforts to cause the third-party licensors of any such Third-Party Works to grant to the Commonwealth a right to use, and to sublicense third-party service-providers to use, any such Third-Party Works solely and exclusively for the Commonwealth's internal business purposes or, in the case of such third-party service-providers, for providing services to the Commonwealth. The Commonwealth shall be responsible for ensuring that such third party service-providers comply with such sublicenses, including restrictions on use and the confidentiality provisions contained in this Agreement.

12.5 Residuals

Notwithstanding anything to the contrary provided in this Agreement, neither Party shall be precluded from using its Residuals, provided that, with respect to Vendor, Vendor's right hereunder to use any of its Residuals that are components of Work Product shall not affect, alter, limit, or interfere with any provisions of this Section 12 that provide for ownership of the Work Product itself, or the Intellectual Property Rights in or pertaining thereto, by the Commonwealth.

12.6 No Limitation of Governmental Rights

Certain federal or state agencies or other governmental entities that provide funds to the Commonwealth or in connection with the Commonwealth's activities and undertakings may have certain rights in the Work Product that arise under federal or state law. Therefore, Vendor hereby grants each such governmental agency or entity such rights in and to the Work Product as such agency or entity is entitled to by applicable law. Each Party expressly acknowledges and agrees that all rights granted, retained, or otherwise allocated pursuant to this Section 12 are expressly subject and subordinate to such rights as may be reserved or granted to such federal or state agencies or other governmental entities by law and that nothing in this Agreement shall or shall be construed to in any way limit such governmental rights, which rights shall take precedence over this Agreement in the event of any conflict.

12.7 Commonwealth Data

The Commonwealth shall permit Vendor and its Subcontractors to have access to, and make appropriate use of, Commonwealth Data solely to the extent Vendor requires such access and use in order to properly and appropriately perform the Services as contemplated by this Agreement. Vendor may only access and use Commonwealth Data in connection with performance of its duties under this Agreement or as specifically directed by the Commonwealth in writing and may not otherwise use, disclose, modify, merge with other data, commercially exploit, or make any other use of Commonwealth Data or take, or refrain from taking, any other action that might, in any manner or form, adversely affect or jeopardize the integrity, security, or confidentiality of Commonwealth Data, except as expressly permitted herein or as expressly directed by the Commonwealth in writing. Vendor acknowledges and agrees that, as between the Parties, the Commonwealth owns all right, title, and interest in, and all Intellectual Property Rights in and to, all Commonwealth Data. Vendor agrees that all copyrightable aspects of Commonwealth Data shall be considered "work made for hire" within the meaning of the

Copyright Act of 1976, as amended. Vendor hereby assigns to the Commonwealth exclusively, without further consideration, all right, title, and interest in and to Commonwealth Data, and all Intellectual Property Rights therein or pertaining thereto, that it may have or obtain, free from any claim, lien for balance due, or rights of retention thereto on the part of Vendor. Vendor also acknowledges that the Parties do not intend Vendor to be, nor in any event shall Vendor be deemed, a joint author of Commonwealth Data within the meaning of the Copyright Act of 1976, as amended. Except as expressly provided herein, Vendor shall in no event, nor in any form or manner, commercially exploit, or make any unauthorized use or disclosure of, any Commonwealth Data. Vendor shall at all times maintain appropriate safeguards and security measures to ensure the confidentiality and security of Commonwealth Data in accordance with the terms of this Agreement and shall at all times treat Commonwealth Data with at least the same level of security then maintained by the Commonwealth with respect to Commonwealth Data and the same level of security as Vendor then maintains for its own data of a similar nature. In no event shall Vendor withhold Commonwealth Data from, or deny access thereto by, the Commonwealth in connection with any Disagreement.

12.8 Infringement

Each of the Parties covenants to perform its responsibilities under this Agreement in a manner that does not infringe, or constitute an infringement or misappropriation of, any Intellectual Property Right of any third party, or violate the other Party's software license agreements or the Intellectual Property Rights disclosed to or known by such Party.

12.9 Cooperation

If at any time either Party brings, or investigates the possibility of bringing, any claim against any third party for infringement of any Intellectual Property Right of such Party, including misappropriation of trade secrets and improper use or disclosure of Confidential Information, then the other Party, upon the request and at the expense of the requesting Party, shall cooperate with and assist such requesting Party in the investigation or pursuit of such claim and provide such requesting Party with any information in its possession that may be of use to such requesting Party in the investigation or pursuit of such claim. Notwithstanding the foregoing, if an Affiliate, client, customer, or other business associate of a Party becomes the subject of such an investigation by the requesting Party, such Party will provide reasonable cooperation to the requesting Party, to the extent not inconsistent with such Party's legal and contractual obligations to such Affiliate, client, customer, or business associate.

13. COMPLIANCE WITH COMMONWEALTH POLICIES AND PROCEDURES

13.1 Policies and Procedures

Vendor covenants that it, its Subcontractors, the Vendor Personnel, and all other agents and representatives of Vendor, shall at all times comply with and abide by all policies and procedures of the Commonwealth and VITA (or that may be established thereby, from time to time) that reasonably pertain to Vendor (and of which Vendor has been provided with advance notice) in connection with Vendor's performance of the Services, provision of the Deliverables,

and operation, maintenance, and support of the Systems, including the policies and procedures set forth in Schedule 13 attached hereto. Vendor shall cooperate with the Commonwealth in ensuring Vendor's compliance with the policies and procedures described in this Section 13, and any violations or disregard of such policies or procedures shall, in addition to all other available rights and remedies of the Commonwealth, be cause for denial of access or use by Vendor Personnel to the Commonwealth's information systems, networks, equipment, property, and facilities. Without limiting the foregoing, Vendor agrees to the following:

13.1.1. Security and Policies

At all times during the Term, Vendor shall provide all Services, use all resources related thereto, and use, operate, support, and maintain the Systems, in an appropriately secure manner and in accordance with the Commonwealth's and VITA's security requirements, policies, and procedures as set forth in Schedule 13 attached hereto and as modified, supplemented, or replaced by the Commonwealth or VITA from time to time, in its sole discretion, by providing Vendor with a written copy of such revised requirements, policies, or procedures reasonably in advance of the date that they are to be implemented and effective (collectively, the "Security Policies"). Vendor shall at all times take all necessary and appropriate action with regard to the prevention, detection, and elimination, by all appropriate means, of fraud, abuse, and other inappropriate or unauthorized access to and use of Systems and the networks involved with the provision or receipt of Services, including the implementation and deployment network management and maintenance applications and tools, the use of appropriate encryption technologies, and the other security-related Services described in Section 3.10. In addition, all Vendor Personnel (including personnel of any Subcontractors) shall be subject to, and shall at all times conform to, all of the Commonwealth's policies, procedures, rules, and requirements regarding the protection of premises, materials, equipment, and personnel, also as set forth in Schedule 13 attached hereto (and contained within the Security Policies). Vendor shall, and shall cause the Vendor Personnel and Subcontractors to, fully comply with and abide by all such Security Policies at all times during the Term. Any violation or disregard of such Security Policies by an individual Vendor Person or Subcontractor shall be cause for denial of access of such Person to the Commonwealth's Systems or property. Vendor shall exercise due care and diligence to prevent any injury to person or damage to property while on the Commonwealth's premises.

13.1.2. Information Access

Prior to performing any Services, Vendor personnel who will access the Systems, or the Commonwealth's computer data and Software, including Commonwealth Data and Commonwealth Software, shall execute a confidentiality and non-disclosure agreement concerning access protection and data security on a form provided by VITA. At all times during the Term, Vendor shall, and shall cause the Vendor Personnel and Subcontractors, and the employees or agents of any of the foregoing, to, fully comply with all of the Commonwealth's policies and procedures regarding data access and security, including those prohibiting or restricting remote access to the Systems and Commonwealth Data, as set forth in the Security Policies. Vendor shall, and shall cause the Vendor Personnel and Subcontractors to, fully comply with and abide by all such Security Policies at all times during the Term. The

Commonwealth shall authorize, and Vendor shall issue, any necessary information-access mechanisms, including access IDs and passwords, and in no event shall Vendor permit any such mechanisms to be shared or used by other than the individual Vendor Person to whom issued. Vendor shall provide each Vendor Person with only such level of access as is required for such individual to perform his or her assigned tasks and functions. From time to time throughout the Term, upon request from the Commonwealth but at least once each Contract Quarter, Vendor shall provide the Commonwealth with an accurate, up-to-date list of those Vendor Personnel having access to the Commonwealth's Systems, Software, or data, and the respective security level or clearance assigned to each such Vendor Person. All Systems, and all data and software contained therein, including Commonwealth Data and Commonwealth Software, used or accessed by Vendor Personnel: (i) shall be used and accessed by such Vendor Personnel solely and exclusively in the performance of their assigned duties in connection with, and in furtherance of, the performance Vendor's obligations hereunder; and (ii) shall not be used or accessed except as expressly permitted hereunder, or commercially exploited in any manner whatsoever, by Vendor, the Vendor Personnel or any Subcontractor, at any time. Vendor acknowledges and agrees that any failure to comply with the provisions of this Section 13.1.2 shall entitle the Commonwealth to deny or restrict the rights of such non-complying Vendor Personnel to access and use the Systems, Commonwealth Data, and Commonwealth Software, as the Commonwealth in its sole discretion shall deem appropriate. Vendor shall at all times use appropriate safeguard and security measures so as to ensure that the confidentiality and security of all Commonwealth Data are securely maintained.

13.1.3. Enhanced Security Procedures

The Commonwealth may, in its discretion, designate certain areas, facilities, or Systems as ones that require a higher level of security and access control. The Commonwealth shall notify Vendor in writing reasonably in advance of any such designation becoming effective. Any such notice shall set forth in reasonable detail the enhanced security or access-control procedures, measures, or requirements that Vendor shall be required to implement and enforce, as well as the date on which such procedures and measures shall take effect. Vendor shall, and shall cause the Vendor Personnel and Subcontractors to, fully comply with and abide by all such enhanced security and access measures and procedures as of such date.

13.1.4. General Security Standards

At all times during the Term, Vendor shall maintain a level of security with regard to the Systems, Commonwealth Data, Commonwealth Software, and all Locations that in no event is any less secure than any of the following levels of security: (i) that maintained by the Commonwealth with regard to such Systems, Commonwealth Data, Commonwealth Software, and the Commonwealth's facilities prior to the Service Commencement Date; (ii) that maintained by Vendor with regard to its own systems, data, and facilities of a similar nature and import; or (iii) that common and prevalent in the IT industry and in accordance with best industry practices.

13.1.5. Breach of Security

Any material breach or violation by Vendor or its Subcontractors, or the employees or agents of any of the foregoing, of any of the provisions of this Section 13 or of the Security Policies shall be deemed a material breach of a material obligation of Vendor under this Agreement, and any repeated, recurring, chronic, or critical breach or violation (as determined by the Commonwealth, in its sole discretion) by Vendor or its Subcontractors, or the employees or agents of any of the foregoing, of any of the provisions of this Section 13 or of the Security Policies shall be deemed an incurable and material breach of a material obligation of Vendor under this Agreement.

13.1.6. Conduct on Commonwealth Premises

Vendor shall at all times comply with and abide by all policies and procedures of the Commonwealth (or that may be established thereby, from time to time) that that pertain to conduct on Commonwealth premises, possession or distribution of contraband, or the access to, and security of, Commonwealth real property or facilities. Vendor shall exercise due care and diligence to prevent any injury to persons or damage to property while on the Commonwealth's premises. The operation of vehicles by any of the Vendor Personnel on the Commonwealth's property shall conform to posted and other applicable regulations and safe-driving practices. Vehicular accidents occurring on the Commonwealth's property and involving any of the Vendor Personnel shall be reported promptly to the appropriate Commonwealth personnel. Vendor covenants that at all times during the Term, it, and its employees and agents (including all Vendor Personnel) and Subcontractors shall comply with, and take no action that results in the Commonwealth being in violation of, any applicable federal, state, and local laws, ordinances, regulations, and rules. Vendor Personnel shall clearly identify themselves as Vendor Personnel and not as employees of the Commonwealth. When on Commonwealth premises, Vendor Personnel shall wear and clearly display identification badges or tags, as approved by VITA.

14. TERM AND TERMINATION

14.1 Term

14.1.1. Initial Term

The period during which Vendor shall be obligated to provide the Services under this Agreement (the "Term") shall commence on the Effective Date and end on the date (the "Expiration Date") that is: (i) the seven year anniversary of the Service Commencement Date (or, in the event of any renewal of the Term, pursuant to Section 14.1.2, the last day of the last of such renewals or extensions); or (b) the applicable Termination Date, in the event of a termination pursuant to Sections 14.2, 14.5, 14.6, or 14.7.

14.1.2. Term Renewals

The Commonwealth may, in its sole discretion, renew the Term for up to two (2) successive periods of not more than three (3) years each (as designated by the Commonwealth, in its sole discretion), in accordance with the pricing terms and conditions set forth in Schedule 10.1, by providing written notice delivered to Vendor at least ninety (90) days before the end of then-current Term (as such Term may have been renewed or extended, in accordance herewith).

14.1.3. Notifications

Unless the Commonwealth shall have already notified Vendor in writing that the Commonwealth is renewing the Term, pursuant to Section 14.1.2, for an additional period, or the Parties shall have already reached written mutual agreement on the terms and conditions to otherwise govern a renewal of the Term, Vendor shall notify VITA in writing within five (5) days before or after the date that is one hundred eighty (180) days prior to the date on which then-current Term shall expire of the approaching expiration of the Term. In the event that the Parties fail to renew the Term and the Commonwealth fails to extend the Term, or in the event of the approaching expiration of the second (2nd) successive Term extension period, each as described above, Vendor shall notify VITA in writing of the approaching expiration of the Term at least seventy-five (75), and not more than ninety (90), days before the date of such expiration.

14.2 Termination by the Commonwealth for Convenience

In accordance with this Section 14.2, the Commonwealth shall have the right to terminate for its convenience, at any time and for any reason or no reason: (i) the Term of this Agreement with regard to the Services, or (ii) any portion the Services (e.g., a Tower or subcomponent), then being provided by Vendor. Any such termination shall be effected by the Commonwealth sending to Vendor a written notice of termination specifying the extent of the Services being terminated and the intended date (the "Termination Date") upon which, at 11:59 p.m., such termination shall be effective (any such notice, a "Termination Notice"). The Termination Date specified in any such Termination Notice sent by the Commonwealth pursuant to this Section 14.2 shall be at least ninety (90) days after the date of such Termination Notice. In the event that the Commonwealth terminates or ends the Term of this Agreement or any portion of the Services pursuant to this Section 14.2, the Commonwealth shall pay Vendor the applicable Exit Fee.

14.3 Termination by the Commonwealth for Change in Control

In the event of a change of control of Vendor or any of its Key Subcontractors (as described below) resulting from a single transaction or a series of related transactions, the Commonwealth shall have the right to terminate: (i) the Term of this Agreement with regard to the Services, or (ii) any portion the Services (e.g., a Tower or subcomponent), then being provided by Vendor by sending to Vendor a Termination Notice at least thirty (30) days before the Termination Date specified therein. Solely for purposes of this Section 14.3: (i) "control"

means the legal, beneficial, or equitable ownership, direct or indirect, of more than fifty percent (50%) of the aggregate of all voting or equity interests in Vendor or the applicable Key Subcontractor; and (ii) a “change in control” shall be deemed to have occurred whenever, as a result of a single transaction or a series of related transactions, a Person (or a group of Persons acting in concert) that had not previously had control of Vendor or the applicable Key Subcontractor obtains control of Vendor or the applicable Key Subcontractor, in accordance with clause (i) of this Section 14.3. In the event the Commonwealth terminates the Term or any portion of the Services pursuant to this Section 14.3, no Exit Fee shall be payable by the Commonwealth to Vendor.

14.4 Termination by the Commonwealth For Failure to Implement Improvements

The Parties shall conduct an annual meeting at least two hundred seventy (270) days prior to the end of the [fifth (5th)], and each subsequent, Contract Year. During each of these annual meetings, and as may be further necessary during the first ninety (90) days of such two hundred seventy (270) day period, if either Party reasonably determines that Vendor is not already utilizing best current practices and best available technology for IT environments in the industry in which the Commonwealth primarily operates, then the Parties shall use all commercially reasonable efforts to negotiate, in good faith, reasonable terms for the implementation of such best practices and technology by the end of the current Contract Year (or such longer period of time beyond the end of the current Contract Year as the Parties may agree to in writing), including appropriate prospective adjustments to the Statements of Work, Service Levels, and Fees to reflect such terms. Such adjustments shall be documented in a written modification to the Agreement, signed by both Parties. If the Parties have not, through the process described above and after exerting all commercially reasonable efforts to negotiate in good faith, reached agreement on appropriate terms and adjustments for a particular Contract Year at least one hundred eighty (180) days before the end of such Contract Year, then the Commonwealth may terminate: (i) the Term of this Agreement with regard to the Services, or (ii) any portion the Services (e.g., a Tower or subcomponent), then being provided by Vendor, as of a Termination Date that is the last day of such Contract Year, by sending to Vendor a Termination Notice at least one hundred fifty (150) days before such Termination Date. In the event the Commonwealth terminates the Term or any portion of the Services pursuant to this Section 14.4, no Exit Fee shall be payable by the Commonwealth to Vendor.

14.5 Termination for Default

14.5.1. By the Commonwealth

Notwithstanding anything to the contrary in Section 24, the Commonwealth shall have the right to terminate: (i) the Term of this Agreement with regard to the Services, or (ii) any portion the Services (e.g., a Tower or subcomponent), then being provided by Vendor by delivery of a Termination Notice to Vendor, if: (a) Vendor commits a Default under this Agreement; or (b) Vendor has incurred liability under the Agreement in an aggregate amount equal to or greater than fifty percent (50%) of then applicable limit on liability specified in Section 16.1.1. In the event of any such termination by the Commonwealth for Default, Vendor shall nevertheless perform its Disentanglement obligations under Section 15 of

this Agreement until they are fulfilled and any Initiative reasonably requested by the Commonwealth for up to one (1) year after the effective date of such termination. Any such termination shall not constitute the Commonwealth's exclusive remedy for such Default, nor shall such a termination cause the Commonwealth be deemed to have waived any of its rights accruing hereunder prior to such Default. If the Commonwealth terminates the Term or any portion of the Services as a result of a claimed Default by Vendor pursuant to the terms of this Section 14.5, and Vendor does not agree that a Default was committed, then Vendor shall have the right to avail itself of all remedies available to it at law or in equity. In the event that it is subsequently and finally determined by a court of competent jurisdiction, or otherwise mutually agreed by the Parties in writing, that the circumstances claimed by the Commonwealth to constitute a Default by Vendor, and that formed the basis of a termination of the Term of this Agreement or any portion of the Services by the Commonwealth pursuant to this Section 14.5, did not in fact constitute a Default, then the Term of this Agreement, or applicable portion of the Services, shall be deemed to have been terminated by the Commonwealth for its convenience, pursuant to Section 14.2, as of the Termination Date specified by the Commonwealth in the Termination Notice originally delivered with respect to such termination, and the provisions of Section 14.2 shall thereafter in all respects govern such termination, except that any additional Fees payable to Vendor as a result thereof (including any Exit Fee) shall be deemed due and payable by the Commonwealth no earlier than the date of such final determination or mutual written agreement, rather than as otherwise provided pursuant to Section 14.2.

14.5.2. By Vendor

Vendor may terminate this Agreement solely if (i) the Commonwealth (or the Eligible Customers) has failed to make payments due under Section 10, (ii) the aggregate total of such payments exceeds [REDACTED] Dollars (\$[REDACTED]), (iii) such payment is not subject to a good faith dispute, (iv) no earlier than (30) calendar days after the payment's due date Vendor gives written notice of its intent to terminate; and (v) no less than thirty (30) additional calendar days pass with such payment not having been made.

14.6 Termination by the Commonwealth for Force Majeure Event

In the event that Vendor experiences a Force Majeure Event that causes a delay or interruption in its performance of a significant or substantial portion of the Services that exceeds fifteen (15) consecutive calendar days in duration, the Commonwealth may terminate the delayed or interrupted Services or (in the event said Services represent a material portion of all of the Services) the Commonwealth may terminate the Term of this Agreement, by sending, in either case, a Termination Notice to Vendor, specifying whether such termination is a partial or a total termination. In the event the Commonwealth terminates the Term or any portion of the Services pursuant to this Section 14.6, no Exit Fee shall be payable by the Commonwealth to Vendor.

14.7 Termination by the Commonwealth for Lack of Funds

The Commonwealth may, by sending a Termination Notice to Vendor, terminate any of the Deliverables, products or Services that Vendor is providing or performing pursuant to

this Agreement (or any portion of any of the foregoing, such as a Tower or subcomponent), effective at the end of the period for which funds are available, to the extent that such Deliverables, products or Services are directly or indirectly involved in the performance a function with regard to which funds are not allocated, appropriated, or available to the Eligible Customers for the continued performance of such Deliverables, products or Services, in accordance with Section 10.9 of this Agreement. In the event the Commonwealth terminates any such Deliverables, products or Services pursuant to this Section 14.7, no Exit Fee shall be payable by the Commonwealth to Vendor.

14.8 Termination for Downgraded Financial Condition

In the event that Vendor's or any of its Key Subcontractors' Credit Rating is reduced below , then the Commonwealth may terminate: (i) the Term of this Agreement with regard to the Services, or (ii) any portion the Services (e.g., a Tower or subcomponent), then being provided by Vendor by sending a Termination Notice to Vendor. The Termination Date specified in any such Termination Notice sent by the Commonwealth pursuant to this Section 14.8 shall be at least ninety (90) days after the date of such Termination Notice. In the event the Commonwealth terminates the Term or any portion of the Services pursuant to this Section 14.8, no Exit Fee shall be payable by the Commonwealth to Vendor.

14.9 Suspension of Work

The Commonwealth may, at any time, on a reasonable and good faith basis, immediately suspend, delay, interrupt, or stop the performance of any or all of the Services being or to be provided by Vendor pursuant to this Agreement, for a cumulative period of not to exceed more than forty-five (45) days within any contiguous six (6) month period, upon sending written notice to Vendor specifying the affected Services (each such suspension, delay, interruption, or stoppage, a "Suspension"). Any such Suspension shall remain in effect until the Commonwealth either: (i) sends Vendor a Termination Notice indicating that any or all of the suspended Services shall be terminated pursuant to the terms of Section 14 hereof, with the provision of any suspended Services not thereby terminated being immediately resumed by Vendor; or (ii) sends Vendor written notice canceling such Suspension and indicating when and how Vendor shall resume performance of the suspended Services. In the event of any such Suspension as described in this Section 14.9: (i) the Commonwealth shall reimburse Vendor for any additional costs that are reasonably and actually incurred by Vendor as a direct result of such Suspension; and (ii) the Parties shall mutually agree upon reasonable and appropriate adjustments to the Transition Plan, any affected Critical Milestones or other milestone dates, and any other schedule, deadline, or timeframe specified in this Agreement, to the extent affected by such Suspension.

14.10 Effect of Ending of Term

The expiration or termination of the Term shall not constitute a termination of this Agreement, and all terms and conditions of this Agreement shall continue in force and effect until all other duties and obligations of the Parties (including Vendor's Disentanglement obligations under Section 15 and the Commonwealth's obligations under this Agreement to pay

the applicable Fees for Services rendered, subject to the provisions of Section 10.5) have been fully performed, discharged, or excused. In the event the Commonwealth elects to terminate all or any particular portion of the Services pursuant to the terms of this Section 14: (i) Vendor shall perform its Disentanglement obligations under Section 15, to the extent applicable to the portion of the Services being terminated; (ii) Vendor shall be entitled to the unpaid Fees for Services actually rendered up to and including the applicable Termination Date, in accordance with Schedule 10.1; and (iii) to the extent applicable to the portion of the Services being terminated, the Commonwealth shall promptly pay any portions of previously earned Fees held back by the Commonwealth in accordance with Schedule 10.1 and in connection with previously delivered Deliverables or completed milestones.

15. DISENTANGLEMENT

15.1 General Obligations

In connection with any expiration or termination of the Agreement, or with termination of Vendor's performance of the Services, or any portion thereof (e.g., a Tower or subcomponent), then being provided hereunder, Vendor shall take all necessary and appropriate actions to accomplish a complete, timely, and seamless transition from Vendor to the Commonwealth, or to any third-party service-providers designated by the Commonwealth, of the Services being terminated or expiring, without material interruption or adverse impact on the Services, the Service Levels, or any other services provided to the Commonwealth by third parties (all such actions, collectively, a "Disentanglement"). Vendor shall promptly cooperate with the Commonwealth and any designated service-providers, and take all steps necessary and appropriate, or reasonably requested, to assist the Commonwealth in effecting a complete and timely Disentanglement, including the provision to the Commonwealth and any designated service-providers of all information necessary to effect the transition, and assume and continue the provision, of the Services, or as is otherwise needed to seamlessly accomplish such Disentanglement, subject to any such service-providers agreeing to protect the confidentiality of Vendor's Confidential Information. Vendor shall provide for the prompt and orderly conclusion of all work related to the Services being terminated, as the Commonwealth may direct, including completion or partial completion and documentation of all work in progress, and other appropriate measures to assure and effect an orderly transition to the Commonwealth or its designated service-providers. All actions performed and services provided by Vendor related to Disentanglement shall be deemed Services and all such Disentanglement Services performed by Vendor shall be at no additional cost to the Commonwealth beyond what the Commonwealth would have paid for the Services absent Vendor's performance of Disentanglement Services. Vendor's obligation to provide such Disentanglement Services shall not cease until a Disentanglement satisfactory to the Commonwealth, including performance by Vendor of all of its obligations pursuant to this Section 15, has been completed. For the first year after such a completion of Disentanglement, the Commonwealth shall be entitled to request that Vendor perform additional Initiatives for the Commonwealth at the Applicable Hourly Rates and Vendor shall not refuse to perform any such Initiative reasonably requested by the Commonwealth during such one (1) year period.

15.2 Disentanglement Process

The Disentanglement process shall begin on the date that any Termination Notice is delivered, in the event that the Term of this Agreement or any portion of the Services is terminated by either Party, or, if no Termination Notice has yet been delivered, on the date that is **[nine (9)]** months prior to the expiration of the Term (as applicable, the “Disentanglement Commencement Date”) and, unless the Parties subsequently agree in writing to renew the Term, Vendor shall continue to provide Disentanglement Services, in accordance with this Section 15 or as the Commonwealth reasonably requests, until a Disentanglement satisfactory to the Commonwealth has been completed, a period that may last up to one (1) year after the Termination Date specified in such Termination Notice. As soon as reasonably practicable after the Disentanglement Commencement Date, Vendor and the Commonwealth, and any third-party service-providers, shall confer and negotiate in good faith to reach mutual agreement on and document within thirty (30) days after such Termination Date, a written plan (a “Disentanglement Transition Plan”) that: (i) allocates responsibilities for Disentanglement and transition of the Services among the Parties and, to the extent applicable, such third-party service-providers; and (ii) sets forth in reasonable detail the respective services to be provided by each of the Parties and such third-party service-providers, including all Disentanglement Services to be performed by Vendor, provided that such plan shall not in any respect lessen or eliminate Vendor’s obligations under this Agreement to provide all Disentanglement Services reasonably requested by the Commonwealth. Vendor shall update such Disentanglement Transition Plan from time to time, as appropriate and subject to the Commonwealth’s reasonable approval, in order to address any impact of any unexpected changes in the Services or the observed Service Level performance, or the in hardware, Software, or other resources used to provide the Services, as such Disentanglement progresses. Vendor shall be required to perform its Disentanglement services on an expedited basis, as determined by the Commonwealth, if the Commonwealth terminates the Term or any portion of the Services pursuant to Sections 14.5 or 14.6 hereof.

15.3 Preparation for Disentanglement

15.3.1. Up-to-Date Documentation

Periodically throughout the Term, and at any time upon the Commonwealth’s request, Vendor shall provide to the Commonwealth such Documentation and other information regarding the performance of Services, or the use, operation, support and maintenance of the Systems and all associated Software (including any applications developed as part of the Services), hardware, networks and equipment, as is collectively sufficient to enable the Commonwealth, or third-party service-provider, to fully assume the provision of any terminated Services and the use, operation, support, and maintenance use of the Systems. Vendor shall also provide sufficient Documentation for all upgraded or replacement Software, hardware, and network components concurrently with the installation thereof. To the extent that any such Documentation relates to Third-Party Works, Vendor shall provide Documentation that is of a type generally created in the industry for such Software, hardware, or network components and allows a service-provider to reasonably comprehend the proper use, operation, support, and maintenance of such Software, hardware, or network components. To the extent

any such Documentation relates to proprietary Vendor Software that is commercially available, Vendor shall provide the Commonwealth with such Documentation as accompanies such commercially available Software, except that if such Documentation is insufficient to allow persons who meet the qualifications of Vendor Personnel set forth in this Agreement to fully comprehend the use, operation, support, and maintenance of such proprietary Vendor Software, then Vendor shall create and provide the Commonwealth with sufficient additional Documentation in a timely manner, at no charge.

15.3.2. Maintenance of Assets

Throughout the Term, Vendor shall continuously maintain all hardware, Software, Systems, networks, and network components and other assets and technology used by Vendor and its Subcontractors in performing Services and operating, supporting, and maintaining the Systems (including leased assets and licensed assets) in good working order and condition, and in such locations and configurations as to be readily identifiable and capable of being transferred back to the Commonwealth or its designees in accordance with the provisions of this Agreement. In addition, Vendor shall maintain insurance on all such assets, in accordance with Section 23.

15.3.3. Advance Consents

Without limiting the obligations of Vendor pursuant to Section 2.4, and subject to the terms of Section 15.4.7, Vendor shall procure and deliver to the Commonwealth, as the end of the Term approaches or upon Disentanglement, and at no charge, such third-party authorizations and consents as are necessary and expedient to permit the timely conveyance or assignment to the Commonwealth (or its designee), during Disentanglement, of all third-party licenses, contracts, and agreements between Vendor and any third-parties who provide goods or services used by Vendor in the provision of Services (collectively, “Essential Agreements”), provided that, in the event that such third-party authorizations or consents have not been obtained and cannot be obtained during Disentanglement, Vendor shall: (i) promptly notify the Commonwealth’s Relationship Manager of which third-party authorizations or consents it is unable to obtain; (ii) use all commercially reasonable efforts to identify reasonable, alternative sources of goods, services, or Software comparable to those being provided under each such Essential Agreement, at a comparable or lower price; and (iii) consult with the Commonwealth regarding such identified alternatives and, to the extent the Commonwealth approves of such alternatives in writing, proceed to procure and implement such alternatives on behalf of the Commonwealth, provided that the Commonwealth shall have the option at all times to enter into the applicable licenses or other contracts in its own name. Vendor shall also use all commercially reasonable efforts to procure for the Commonwealth, upon Disentanglement, the right to obtain ongoing support and maintenance services (including all enhancements and upgrades) with respect to the assets (i.e., hardware, Software, and equipment) that are the subject of such Essential Agreements at the price at which, and for so long as, such support and maintenance services are made commercially available by such third parties whose consent is being procured hereunder, and, in the event that such support and maintenance services cannot be obtained, Vendor shall: (a) promptly identify in a written notice to the Commonwealth’s Relationship Manager those Essential Agreements and other contracts with regard to which

Vendor is unable to obtain ongoing support and maintenance services for the Commonwealth; (b) use all commercially reasonable efforts to identify reasonable alternative sources of such unobtainable support and maintenance services; and (c) consult with the Commonwealth regarding such identified alternatives and, to the extent the Commonwealth approves of such alternatives in writing, proceed to procure and implement such alternatives on behalf of the Commonwealth, provided that the Commonwealth shall have the option at all times to enter into the applicable licenses or other contracts in its own name. Notwithstanding the foregoing, in no event shall Vendor be required or obligated to make any payments, or provide any other forms of compensation, to any third party except as provided by Section 15.4.7 or as otherwise mutually agreed by the Parties in writing, even if the making of such payment could secure additional, otherwise unobtainable rights for the Commonwealth or its designee.

15.3.4. Preparation for Successor to this Agreement

At any time or times during the Term, at the written request of the Commonwealth, Vendor shall provide the Commonwealth with any information that the Commonwealth is entitled to receive under this Agreement that the Commonwealth desires to use in preparing a request for proposal to solicit responses, or responding to proposals, for the purpose of entering into an agreement that would constitute the successor to this Agreement. Such requested information may include, among other things, current and projected transactional or other relevant volumes, resource utilization and performance statistics and trends, forms utilization, and such other information, statistics, and materials related to the provision of the Services or the use, operation, support, and maintenance of the Systems as the Commonwealth shall deem necessary or appropriate.

15.3.5. All Necessary Cooperation and Actions

Vendor shall take such additional actions and perform such additional tasks as are necessary, appropriate, or reasonably requested by the Commonwealth, whether during the Term or during Disentanglement, to ensure a timely and seamless Disentanglement, in accordance with this Section 15, including completely fulfilling all of Vendor's obligations under this Section 15 to the reasonable satisfaction of the Commonwealth.

15.4 Specific Disentanglement Obligations

During Disentanglement, as part of the Disentanglement Services, the Parties shall perform their respective obligations specifically identified below in this Section 15.4, with respect to the Services or, in the event of a termination of less than all of the Services, the portion of Services being terminated.

15.4.1. Extension of Services

The Commonwealth may elect to delay the Expiration Date of any expiration or termination of all or a part of the Services by giving Vendor thirty (30) days' advance written notice to such effect, which notice shall specify the new expiration or termination date; provided that the Commonwealth may not delay such expiration or termination,

in the aggregate, more than one hundred and eighty (180) days following the originally specified Expiration Date of such expiration or termination, unless otherwise agreed by Vendor.

15.4.2. Full Cooperation and Information

The Parties shall cooperate fully with one another during Disentanglement to facilitate a smooth transition of the applicable Services from Vendor to the Commonwealth or the Commonwealth's designated service-provider. Such cooperation shall include the provision (both before and after the cessation of Vendor's providing of all or any part of the terminated Services under this Agreement) by Vendor to the Commonwealth of sufficient information (including all information then being utilized by Vendor) to enable the Commonwealth or its designee to fully assume and continue the provision of such Services without material interruption or adverse impact upon the Commonwealth.

15.4.3. License to Proprietary Technology

Except as otherwise provided herein, Vendor, upon Disentanglement and at no charge to the Commonwealth, shall provide the Commonwealth (or its designee) with a fully-paid, perpetual, royalty-free, worldwide license to use, copy, and modify all Underlying Works that are needed in order to allow the Commonwealth (or its designee) to continue to perform and receive the benefit of the Services and to use, operate, support, maintain, and receive the benefit of the Systems, as such Systems might exist, or such Services are being performed, at the time of the Expiration Date. Vendor shall provide the Commonwealth with a full and complete copy of each such Underlying Work that constitutes Software, in such forms and media as requested by the Commonwealth, together with all object code, source code, and then-available Documentation thereto. If such then-available Documentation is insufficient to allow individuals who meet the qualifications required of the Vendor Personnel set forth in this Agreement to fully understand, use, and operate such Underlying Works, then Vendor shall create additional Documentation that fully meets the requirements set forth in this Agreement in a timely manner and promptly provide such additional Documentation to the Commonwealth, all at no charge. Vendor shall also offer to the Commonwealth the right to receive maintenance (including all enhancements and upgrades) and support with respect to all Underlying Works for which Vendor commercially offers such maintenance and support, for so long as the Commonwealth requires it, at no charge for the first two (2) years following the applicable Expiration Date and, thereafter, at reasonable commercial rates and terms similar to those that Vendor is then offering to other major customers for services of a similar nature and scope, unless otherwise agreed to by the Parties in writing.

15.4.4. Data and Documentation

In addition to Vendor's obligations with regard to Documentation set forth in Section 15.4.3, Vendor shall deliver to the Commonwealth or the Commonwealth's designee, promptly upon the Commonwealth's request, all Documentation and data related to the Commonwealth or the performance of the Services, including all the Commonwealth Data, then held by Vendor, except for documents and data that are legally privileged in the hands of Vendor, and Vendor shall securely destroy, in accordance with the Commonwealth's data and

documentation destruction policies, all copies thereof not turned over to the Commonwealth, all at no charge to the Commonwealth.

15.4.5. No Interruptions or Adverse Impact

Vendor shall cooperate with the Commonwealth and all of the Commonwealth's other service-providers to ensure a smooth transition throughout Disentanglement, with no interruption of Services, no adverse impact upon the provision of Services or upon the achievement of Service Levels, no adverse impact upon the Commonwealth's businesses, business activities, employees, and customers, no interruption of any services provided to the Commonwealth by third parties, and no adverse impact upon the provision of such third-party services or their quality.

15.4.6. Transfer of Assets

Effective as of the Expiration Date, Vendor shall convey to the Commonwealth (or its designee) such assets as the Commonwealth may, in its sole discretion, select from among those assets then held and used by Vendor in or for the provision of Services or the operation, support, or maintenance of the Systems, excluding those assets expressly agreed upon by the Parties in writing from time to time as Shared Resources, at a price consisting of the aggregate net book value of such selected assets at that time, calculated in accordance with the guidelines set forth in Section 2.1.3. After the Expiration Date, Vendor shall promptly remove from the Commonwealth's premises any Vendor-owned assets that the Commonwealth did not select for purchasing.

15.4.7. Transfer of Leases, Licenses, and Contracts

Effective as of the Expiration Date, Vendor, at its expense, shall convey or assign to the Commonwealth (or its designee) such leases, licenses, and other contracts as the Commonwealth may, in its sole discretion, select from among those associated with the use of properties, Software, or other goods or services by Vendor or any other Person to facilitate or enable the performance of the Services or the use, operation, support, or maintenance of the Systems. Notwithstanding anything to the contrary in this Section 15.4.7 or elsewhere in this Agreement, Vendor shall be responsible for the satisfaction and performance of all obligations (including all financial obligations) under any such leases, licenses, and other contracts that may be assigned or conveyed to the Commonwealth (or its designee) pursuant to this Section 15.4.7 with respect to periods prior to the date of any such conveyance or assignment, and Vendor shall indemnify and hold the Commonwealth Indemnitees harmless from and against, and reimburse the Commonwealth for any damages, liabilities, losses, costs, and expenses (including reasonable attorney's fees and out-of-pocket expenses) resulting from, any claim that Vendor did not perform such obligations.

15.4.8. Hiring of Employees

During Disentanglement, regardless of whether all or any portion of the Services are being terminated, Vendor shall cooperate with and assist (and shall use all

commercially reasonable efforts to cause its Subcontractors to timely cooperate with and assist) with the Commonwealth's (or its designee's) offering of employment to those Vendor and Subcontractor employees who are selected by the Commonwealth, in its sole discretion, and whose then-current job functions or positions are directly related to the Services being terminated, and in effecting, in the manner most favorable to the Commonwealth, the transition of any such employees who are hired by the Commonwealth or its designee). Such cooperation and assistance shall include allowing the Commonwealth (or its designee) to meet with such employees at Vendor's or its Subcontractor's facilities and providing the Commonwealth with all relevant and pertinent details regarding the salary and benefits then being received by each Vendor or Subcontractor employee then occupying any such positions or performing any such functions, so as to enable the Commonwealth to make a reasonable and comparable offer. Notwithstanding the immediately preceding sentence, Vendor shall not be required to take any actions that would constitute a breach of any agreement, in existence as of the Effective Date, with a Subcontractor regarding non-solicitation of such Subcontractor's employees. Such offers of employment by the Commonwealth (or its designee), if any, shall be made during the period starting on the Disentanglement Commencement Date and ending on the date that is ninety (90) days after the Expiration Date. Vendor shall be solely responsible for, and shall pay, all financial obligations owing or accruing with respect to the period prior to the date that the Commonwealth (or its designee) hires any such employees of Vendor, and Vendor shall use all commercially reasonable efforts to cause each Subcontractor to pay any such financial obligations owing or accruing with respect to the period prior to the date that the Commonwealth (or its designee) hires any such employees of such Subcontractor, in accordance with the provisions of this Agreement and all Schedules attached hereto. On the Expiration Date, Vendor shall execute and deliver to the Commonwealth a written agreement in which Vendor makes, as of the Termination Date, the same representations and warranties to the Commonwealth with regard to the employees of Vendor and Vendor's Subcontractors that are being hired by the Commonwealth in connection with such Disentanglement as any made herein by the Commonwealth to Vendor regarding the Affected Employees being hired by Vendor.

15.4.9. Vendor WARN Notice

If, in the opinion of Vendor, the Disentanglement Transition Plan results in a need for a WARN Notice, then Vendor shall take such action as Vendor deems necessary to provide such WARN Notice, and advise the Commonwealth of the actions Vendor has taken.

15.4.10. Proprietary Network

If Vendor uses any proprietary telecommunications network to provide Services to the Commonwealth, then Vendor shall continue to make available such network for the Commonwealth's use, subject to the terms and conditions and rates set forth in this Agreement, for at least [] () months following the Expiration Date.

16. DEFAULT

16.1 Limitation of Liability and Disclaimers

Subject to the express provisions and limitations of this Section 16.1, the Parties intend that each Party shall be liable to the other Party for all damages incurred as a result of the breaching Party's failure to perform its obligations.

16.1.1. Limitation on Amount of the Commonwealth's Liability

SUBJECT TO ALL APPLICABLE LAW AND EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN SECTION 16.1, THE AGGREGATE CUMULATIVE MONETARY LIABILITY OF THE COMMONWEALTH FOR ALL CLAIMS ARISING UNDER OR RELATING TO THIS AGREEMENT, NOTWITHSTANDING THE FORM IN WHICH ANY ACTION IS BROUGHT, SHALL BE LIMITED TO THE AMOUNT OF MONEY SHOWN TO BE OWED AND UNPAID TO VENDOR FOR SERVICES RENDERED AND ANY AMOUNTS DUE UNDER SECTION 15.

16.1.2. Limitation on Amount of Vendor's Liability

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN SECTION 16.1, VENDOR'S AGGREGATE CUMULATIVE MONETARY LIABILITY FOR ALL CLAIMS ARISING UNDER OR RELATING TO THIS AGREEMENT, NOTWITHSTANDING THE FORM IN WHICH ANY ACTION IS BROUGHT, SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE GREATER OF (I) [REDACTED] DOLLARS (\$ [REDACTED]) OR (II) TWENTY-FOUR (24) TIMES THE MONTHLY AVERAGE OF FEES INVOICED BY VENDOR UNDER THIS AGREEMENT FOR SERVICES RENDERED.

16.1.3. Limitation on Types of Damages

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN SECTION 16.1, NEITHER PARTY SHALL BE LIABLE FOR LOST PROFITS, LOST REVENUES, OR EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL, DAMAGES EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

16.1.4. Acknowledged Direct Damages

THE PARTIES ACKNOWLEDGE AND AGREE THAT THE FOLLOWING TYPES OF DAMAGES SHALL ALL BE CONSTRUED AS DIRECT DAMAGES AND NOT AS INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES:

(i) ANY ADDITIONAL COSTS THAT THE COMMONWEALTH IS REQUIRED TO EXPEND TO PROVIDE COMPARABLE SERVICES ITSELF OR PROCURE COMPARABLE SERVICES FROM AN ALTERNATIVE

SOURCE AS A RESULT OF ANY DEFAULT BY VENDOR HEREUNDER (TO THE EXTENT IN EXCESS OF THE FEES THAT COMMONWEALTH WOULD HAVE PAID TO VENDOR PURSUANT TO THIS AGREEMENT);

(ii) ANY AMOUNT OF MONEY PAID BY COMMONWEALTH OR ITS AFFILIATES TO ADDRESS, MITIGATE, OR AVOID ANY ADVERSE CONSEQUENCES OF ANY DEFAULT BY VENDOR HEREUNDER;

(iii) ANY AMOUNT OF MONEY UNPAID BY COMMONWEALTH TO VENDOR FOR SERVICES RENDERED HEREUNDER; AND

(iv) COST AND EXPENSES OF RESTORING ANY ALTERED, LOST OR STOLEN DATA OF THE COMMONWEALTH.

16.1.5. Classification of Performance Credits

PERFORMANCE CREDITS ASSESSED AGAINST VENDOR PURSUANT TO THIS AGREEMENT SHALL NOT BE A TYPE OF DAMAGE EXCLUDED UNDER SECTION 16.1.3 OR BE COUNTED TOWARD THE LIMITATIONS OF LIABILITY SET FORTH IN SECTION 16.1.2.

16.1.6. Exceptions for Limitations on the Commonwealth's Liability.

THE LIMITATIONS CONTAINED IN THIS AGREEMENT UPON THE TYPES AND AMOUNTS OF THE COMMONWEALTH'S LIABILITY SHALL NOT APPLY TO: (i) CLAIMS FOR DAMAGES FOR PHYSICAL BODILY INJURY (INCLUDING DEATH) AND DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY CAUSED BY THE NEGLIGENT OR TORTIOUS CONDUCT OF THE COMMONWEALTH; OR (ii) CLAIMS FOR LOSSES ARISING OUT OF THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF COMMONWEALTH.

16.1.7. Exceptions for Limitations on Vendor's Liability

THE LIMITATIONS CONTAINED IN THIS AGREEMENT UPON THE TYPES AND AMOUNTS OF VENDOR'S LIABILITY SHALL NOT APPLY TO: (i) CLAIMS SUBJECT TO (OR AMOUNTS PAYABLE BY VENDOR PURSUANT TO) INDEMNIFICATION BY VENDOR (SECTION 22.1); (ii) CLAIMS WITH RESPECT TO VENDOR'S OR ITS SUBCONTRACTOR'S BREACH OF CONFIDENTIALITY (SECTION 19); (iii) CLAIMS FOR LOSSES ARISING OUT OF THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF VENDOR OR ITS SUBCONTRACTORS; (iv) CLAIMS BASED UPON VENDOR'S OR ITS SUBCONTRACTOR'S BREACH OF SECTION 24.2 HEREOF; (v) CLAIMS BASED UPON VENDOR'S OR ITS SUBCONTRACTOR'S BREACH OF SECTION 15 HEREOF; (vi) CLAIMS BASED UPON VENDOR'S OR ITS SUBCONTRACTOR'S BREACH OF SECTION 3.9 (DISASTER RECOVERY) OR SECTION 3.10 (SECURITY) HEREOF; (vii) CLAIMS FOR DAMAGES FOR PHYSICAL BODILY INJURY (INCLUDING DEATH) AND DAMAGE TO REAL OR

TANGIBLE PERSONAL PROPERTY CAUSED BY THE NEGLIGENT OR TORTIOUS CONDUCT OF VENDOR OR ITS SUBCONTRACTORS; AND (viii) CLAIMS BASED UPON ANY REPUDIATION OF THIS AGREEMENT BY VENDOR OR VENDOR'S REFUSAL TO PERFORM ITS DUTIES AND OBLIGATIONS, AND PROVIDE THE SERVICES AND DELIVERABLES, AND OPERATE, SUPPORT, AND MAINTAIN THE SYSTEM, IN ACCORDANCE WITH THIS AGREEMENT.

16.1.8. Waiver of Limitation on Amount of Vendor's Liability.

If, during the Term, Vendor's total aggregate liability for all claims asserted against it by the Commonwealth under this Agreement equals or exceeds fifty (50%) of the amount specified in Section 16.1.2, then the Commonwealth may provide to Vendor a written notice requesting that Vendor either waive the limitations set forth in Section 16.1.2 or increase the amount specified in Section 16.1.2 by no less than Vendor's total aggregate liability for all claims asserted against it by the Commonwealth under this Agreement as of the date of such written notice. If Vendor refuses to take such actions in writing within thirty (30) days of Vendor's receipt of the Commonwealth's written request therefor, the Commonwealth may terminate this Agreement pursuant to Section 14.5.1.

16.2 Force Majeure Events

If a Force Majeure Event is the material contributing cause of a Party's failure to perform any of its obligations hereunder, such obligations, after notification by such Party to the other Party, shall be deemed suspended to the extent such obligations are directly affected by such Force Majeure Event, until the Force Majeure Event has ended and a reasonable period of time for overcoming the effects thereof has passed, except that if a Force Majeure Event results in Vendor being unable to perform during any period of time some or all of the Services in accordance with the terms hereof, the Commonwealth: (i) shall not be required to pay for any such unperformed Services; (ii) shall be entitled, without the payment of the fees described in Section 14.2, to engage an alternate provider, on an interim basis, to perform the Services that Vendor is unable to perform as a result of the Force Majeure Event, until such time as Vendor is able again to perform the Services in accordance with the terms hereof, and shall be entitled during such interim period to reimbursement from Vendor (with such reimbursement not to cover any period to the extent in excess of ninety (90) days) for the costs and expenses of such provision of Services to the extent that said costs and expenses exceed the amount that the Commonwealth would have paid Vendor hereunder for such Services; (iii) shall be entitled to a share of Vendor's resources devoted to returning Vendor to full performance of all Services hereunder, that is equal to or greater than the share of such resources that Vendor allocates to other of its customers with whom it has agreements that are similar to this Agreement; and (iv) shall have the right to terminate this Agreement in accordance with the terms of Section 14.6. Both Parties shall use all commercially reasonable efforts to minimize delays and mitigate adverse circumstances that occur due to a Force Majeure Event. Notwithstanding the foregoing, a Force Majeure Event shall not relieve or excuse Vendor from its obligations hereunder: (a) that are not directly affected by such Force Majeure Event; or (b) to the extent that such Force Majeure Event is caused by Vendor's or its Subcontractors' (A) failure to perform such obligations in accordance with this Agreement, (B) failure to sufficiently prepare

for, avoid, or mitigate the adverse effects of such Force Majeure Event, or (C) negligence, omission, or willful misconduct.

16.3 Step-In Rights

If Vendor commits a Default that has a significant impact on a material portion of the operations of the Commonwealth and Vendor is unable to cure such Default within twenty-four (24) hours, then the Commonwealth may, in addition to its other remedies at law and in equity, obtain from a third party or provide itself services that will allow the Commonwealth to conduct operations until Vendor has cured the Default or this Agreement is terminated in accordance with the terms of this Agreement. Vendor shall reimburse the Commonwealth for all costs and expenses of obtaining or providing such services for up to ninety (90) days and provided that the Commonwealth shall continue to pay amounts due and owing to Vendor under the terms of this Agreement subject to the pricing methodology set forth in this Agreement, which shall be calculated upon the Commonwealth's usage of such Services from the third party. If Vendor is not able to restore such Services within forty-eight (48) hours, the Commonwealth may terminate this Agreement pursuant to Section 14.5.1. This Section 16.3 shall not be construed as limiting the Commonwealth's rights under Section 14.5.1 or elsewhere in this Agreement.

16.4 Savings Clause

Vendor's failure to perform its responsibilities under this Agreement or to meet the Service Levels shall be excused if and to the extent such Vendor non-performance is caused by an Eligible Customer's or Eligible Customer's third-party contractor (except as set forth in Section 3.20) failure to perform any of its specific and express obligations or responsibilities under this Agreement, and Vendor could not have foreseen, prevented, or avoided such failure, or promptly mitigated the effects of such failure, without expending a material amount of additional time, resources, or cost; but only if (i) Vendor promptly notifies VITA and the Eligible Customer of such failure to perform and its inability to perform under such circumstances, (ii) Vendor provides VITA and the Eligible Customer with every reasonable opportunity to correct such failure to perform and thereby avoid such Vendor non-performance, (iii) Vendor identifies and pursues commercially reasonable means to avoid or mitigate the impact of such failure to perform, (iv) Vendor uses commercially reasonable efforts to perform notwithstanding such failure to perform, and (v) Vendor conducts a Root Cause Analysis and thereby demonstrates that such failure to perform is the cause of Vendor's non-performance. VITA, in its sole discretion, may forego or delay any work activities or temporarily adjust the work to be performed by Vendor, the schedules associated therewith or the Service Levels to permit the performance of such activities using such personnel or resources already assigned to perform the Services and Vendor shall be temporarily relieved of its obligation to meet impacted Service Levels as and to the extent provided for in VITA's decision.

17. REPORTS

17.1 Reports

As part of the Services, Vendor shall furnish the Commonwealth with reports in the form, and with the frequency, and covering the information, described in Schedule 17.1, or as otherwise reasonably requested by the Commonwealth, in writing, from time to time. As provided in Schedule 17.1, such reports shall address such issues as Vendor's performance of the Services, cost-management, Subcontractor relationships, End-User satisfaction, and human resources. All such reporting shall include allocations or breakdowns as necessary for the Commonwealth's internal chargeback purposes, in accordance with such procedures and materials as may be furnished by the Commonwealth to Vendor in writing from time to time. In addition, in the event that Vendor, at any time during the Term, fails to perform the Services in accordance with the Service Levels, Vendor shall promptly provide the Commonwealth with such additional reports, in such form, and with such frequency, as the Commonwealth shall reasonably request. On an annual basis, the Parties shall discuss the requirements set forth in Schedule 17.1 and shall modify such requirements in such a manner as they deem appropriate and mutually agree to in writing. Except as otherwise provided in Schedule 17.1, Vendor shall furnish all reports to the Commonwealth in an electronic form. Vendor shall promptly (as soon as possible, but in no event later than three (3) days after learning thereof) inform the Commonwealth of any known and material deficiencies, omissions, or irregularities in the Commonwealth's requirements or in Vendor's performance of the Services that may come to Vendor's Relationship Manager's attention. Vendor shall furnish the Commonwealth with materials and applicable research and development information, such as published materials and industry studies conducted for or by Vendor, that come to the attention of Vendor's Relationship Manager and pertain to the Services, and that Vendor's Relationship Manager reasonably believes would assist the Commonwealth in setting its IT-related policies or requirements. Vendor's Relationship Manager shall also advise the Commonwealth of other relevant matters of a material nature, including those that have a cost associated with them but that reasonably might be helpful to the Commonwealth in setting or revising such policies or requirements.

17.2 Additional Commitments

In accordance with Section 17.1, Vendor shall promptly inform the Commonwealth of any material deficiencies, omissions, or irregularities in the Commonwealth's requirements for the performance of Services, or in Vendor's actual performance of the Services, that may come to Vendor's Program Manager's attention. To the extent that it is permitted by the applicable third parties without incurring additional cost, Vendor shall furnish the Commonwealth with all existing and future research and development resources (e.g., published materials, and industry studies conducted for or by Vendor) that come to Vendor's attention, that pertain or are related to the Services, and that would reasonably be of assistance to the Commonwealth in setting its policies or requirements under this Agreement.

17.3 Vendor's Report of Sales and Industrial Funding Adjustment

Vendor shall submit the "Vendor Monthly Report of Sales" which is available online at: **[URL will be provided at later date]**. The report shall be submitted in electronic form via electronic mail to the VITA Relationship Manager and the VITA Controller, at such email addresses as provided by VITA, by the 10th day of every month during the Term, reporting all invoices paid by VITA for the preceding month. The report shall also show a cumulative record of all sales which shall carry forward for the duration of the Term. The Vendor Monthly Report of Sales template (in MS Excel format) indicated at the link above is required to be used by Vendor and provided to VITA. The "Vendor Monthly Report of Sales" is a detailed record that is prepared from actual invoices submitted to and paid by the pursuant to this Agreement. Data submitted shall include: name of project, Vendor's tax identification number, invoice date, invoice number, order number, name of requesting entity, End-User name and telephone number, amount billed for Services performed for previous month, and IT Service category. Vendor shall submit Industrial Funding Adjustment payment at the same time as submitting the "Vendor Monthly Report of Sales" in the form of a check or electronic funds disbursement made payable to the Controller of VITA, based on **[% to be determined at a later date]** percentage of total sales under this Agreement. Vendor shall include this Agreement's number, "report amounts" and "report period" with all Industrial Funding Adjustment payments. Vendor shall remit Industrial Funding Adjustment payments made via check to: VITA, ATTN: Controller; 110 South 7th Street, 3rd Floor; Richmond, VA 23219-3931. Failure to comply with reporting and payment requirements of this section shall be deemed a Default under this Agreement.

18. RECORDKEEPING AND AUDIT RIGHTS

18.1 Recordkeeping

18.1.1. General Obligations

Vendor shall at all times maintain true, complete, and accurate records and books of account with respect to all aspects of Vendor's performance and invoices under this Agreement utilizing generally accepted accounting principles ("GAAP"), consistently applied, and complying in all respects with all applicable federal, state, and local laws, regulations, and ordinances. Such records and books of account, and the accounting controls related thereto: (i) shall be considered Confidential Information; (ii) shall be prepared in such a manner as to permit the Commonwealth's financial statements to be certified as having been prepared in accordance with GAAP and to maintain accountability of assets, with such recorded accountability compared with existing assets on an annual basis and appropriate action promptly taken to address any discrepancies; and (iii) shall be maintained by Vendor at a principal business location within the Commonwealth. The Commonwealth, upon prior written notice, may examine and make extracts of information and copy parts thereof to the extent necessary for the Commonwealth to verify the accuracy of Vendor's invoices or Vendor's performance under this Agreement, at any reasonable time during normal business hours. In the event that Vendor ceases to exist as a legal entity, such records and books pertaining to this Agreement shall be forwarded to the surviving entity in a merger or acquisition, or in the event of liquidation, to the

Commonwealth. Vendor shall retain for a period of five (5) years after the date of final payment for Services rendered hereunder (including any Disentanglement Services), or such longer period as may be required by applicable law or regulation, all records and information required to verify amounts invoiced under this Agreement and Vendor's and its Subcontractors' compliance with applicable law and regulation in its performance under this Agreement. The obligations and requirements of this Section shall apply to all Vendor Subcontractors.

18.1.2. Access and Remedy

The Commonwealth, or, subject to the execution of appropriate Confidentiality Agreements, the Commonwealth's Auditors, shall be granted access to the aforesaid records for the purpose of verifying the accuracy of Vendor's invoicing and contractual compliance, during normal business hours, upon reasonable notice to Vendor. All such verifications, notwithstanding anything to the contrary elsewhere in this Agreement, shall not include access to proprietary or Confidential Information except to the extent necessary to confirm the accuracy of Vendor's invoices or the extent of Vendor's legal and contractual compliance. Nevertheless, subject to such limitations, during such hours and with such advance notice, Vendor shall grant the Commonwealth and its representatives full and complete access to all of the Vendor Personnel and to the relevant portion of Vendor's books, records, documents, data, or information, as they relate to amounts invoiced, invoices submitted, or the extent of Vendor's compliance with this Agreement, or as such access to personnel, books, records, documents, data, and information may be required in order for the Commonwealth to ascertain any facts relevant to determining the accuracy of Vendor's invoicing hereunder, including facts with regard to verification of Fees (and components and calculations thereof). In the event that any such verification reveals an overcharge (net of any undercharges) to the Commonwealth with respect to the Fees, then: (i) Vendor shall promptly refund such overcharge; (ii) if such overcharge represents, as to any invoice, more than three percent (3%) of the amounts that the Commonwealth should have been charged under such invoice, then Vendor shall promptly refund to the Commonwealth, or at the Commonwealth's option, issue to the Commonwealth a credit for, the cost of such audit; and (iii) Vendor shall fully cooperate with appropriate Commonwealth personnel, or the Commonwealth's Auditors, in reviewing, evaluating, and, to the extent necessary, revising Vendor's internal controls, promptly implementing any recommended, material changes.

18.1.3. Controls, Policies, and Procedures

Vendor shall at all times maintain such controls, policies, and procedures, and cause its auditors to prepare and deliver to the Commonwealth's Auditors such annual and more frequent reports as to such controls, policies and procedures, as reasonably requested by the Commonwealth or the Commonwealth's Auditors. Vendor shall promptly address any audit-control issues or weaknesses identified during any the Commonwealth audit, at no cost to the Commonwealth. If specific audit recommendations by the Commonwealth's Auditors are not implemented by Vendor, then Vendor should implement such alternative steps as are reasonably satisfactory to the Commonwealth for the purposes of minimizing or eliminating the risks identified in any such audit.

18.1.4. SAS 70 Type II

On a Commonwealth fiscal year basis (7/1 – 6/30) (“Fiscal Year”), Vendor and all Key Subcontractors shall require its Auditors to conduct an examination of the controls placed in operation and a test of operating effectiveness, as defined by Statement on Auditing Standards No. 70, Reports on the Processing of Transactions by Service Organizations (“SAS 70”), of the Services and issue a report thereon (a “Type II Report”) for the applicable Fiscal Year. Vendor shall submit the proposed control objectives to VITA for approval prior to conducting the audit. Vendor and all Key Subcontractors shall deliver to VITA five (5) copies of the Type II Report within two (2) months after conducting the SAS 70 assessment for a Fiscal Year and Vendor shall use all commercially reasonable efforts to correct any deficiencies or resolve any problems identified in such report. In the event that the Commonwealth subsequently and reasonably incurs charges in excess of Seven Thousand Five Hundred Dollars (\$7,500) from its Auditors in connection with an audit of the Commonwealth’s consolidated financial statements, then, to the extent that such excess charges result from additional audit procedures that such Auditors had to perform because of inadequacies or findings identified in a previously delivered Type II Report that have not been adequately addressed by Vendor or any Key Subcontractors (including control objectives or controls that that Vendor has not identified or instituted and that the Commonwealth reasonably believes are necessary to ensure its desired level of Service), Vendor shall promptly reimburse the Commonwealth for such excess charges, up to a maximum of Twenty-Five Thousand Dollars (\$25,000) for each Fiscal Year. In no event shall this Section 18.1.4 in any way modify or reduce Vendor’s Auditors’ responsibilities under SAS 70.

18.2 Financial Audit Rights

Vendor shall, at the Commonwealth’s request, allow the Commonwealth’s Auditors to audit Vendor’s and its Subcontractors’ records to the extent necessary to verify any amounts payable by the Commonwealth hereunder, including those records related to performance obtained with regard to measured Service Levels. Vendor shall provide the Commonwealth’s Auditors with reasonable access to such information relating to this Agreement and Vendor’s business and its Subcontractors’ businesses as may be necessary to confirm the accuracy of Vendor’s invoices, documents, and other information supporting such invoices, and pricing-adjustment computations for any given year. The Commonwealth’s Auditors shall perform such audits only after executing nondisclosure agreements reasonably satisfactory to Vendor and shall not be Vendor Competitors. All such audits shall be conducted during business hours, with reasonable advance notice, in compliance with Vendor’s security requirements. Such audits shall include access to proprietary or Confidential Information of Vendor only to the extent necessary to comply with the provisions of Section 10 and shall not include unnecessary access to Vendor’s internal cost data, except to the extent any Fees reflect any pass-through costs or are on a “cost-plus” or similar basis or as necessary to comply with applicable law. If any of the foregoing audits reveals that Vendor has overcharged the Commonwealth during the period to which the audit relates, then Vendor shall promptly refund such overcharges to the Commonwealth and, if the amount of the overcharge (offset by any undercharges revealed by such audit) is more than three percent (3%) of Vendor’s charges to the

Commonwealth for such period, the reasonable cost of such audit shall be borne by Vendor. If any such audit reveals that Vendor has undercharged the Commonwealth during the period to which the audit relates, then the Commonwealth shall promptly pay such undercharges to Vendor.

18.3 Operational Audit Rights

At any time, and from time to time, during the Term, the Commonwealth may engage such Auditors as it shall deem appropriate (except that such Auditors shall not be Vendor Competitors) to conduct an audit of Vendor's and its Subcontractors' practices, the facilities used by Vendor or Vendor's Subcontractors to provide the Services, and related operational matters (including audits of Vendor's legal compliance and Vendor's security policies and practices with regard to IT and data access and control) in order to verify compliance with the terms of this Agreement. Any such audit shall be conducted in a reasonable manner and after reasonable advance notice (except that no notice shall be required with respect to a security audit). For purposes of such audit, Vendor shall, and shall cause its Subcontractors to, grant the Commonwealth and its representatives full and complete access, during normal business hours and upon reasonable notice, to all of the Vendor Personnel and to the relevant portion of Vendor's and its Subcontractors' books, records, documents, data, and information, as they relate to this Agreement, or as such access to personnel, books, records, documents, data, or information may be required in order for the Commonwealth to ascertain any facts relevant to Vendor's and its Subcontractors' performance hereunder (other than cost or pricing information). Vendor shall, and shall cause its Subcontractors to, provide the Commonwealth, or its authorized representatives, with such information and assistance as are reasonably requested in order to perform such audits, provided that the Parties shall endeavor to arrange such assistance in such a way that it does not interfere with the performance of Vendor's duties and obligations hereunder. If any such audit reveals an inadequacy or insufficiency of Vendor's performance, including performance in connection with any security obligations of Vendor as set forth in this Agreement, Vendor shall promptly develop and provide to the Commonwealth a reasonable and detailed corrective action plan and promptly thereafter implement such plan in accordance with its terms. In addition, the cost of such audit shall be borne by Vendor in the event that: (i) the Commonwealth specifically identifies a particular deficiency with respect to Vendor's performance of any particular Service; (ii) Vendor either denies or fails to take prompt actions to investigate and cure such identified deficiency; (iii) an audit is initiated hereunder to investigate such deficiency; and (iv) the audit confirms the deficiency with respect to Vendor's performance of such Service. Any of the Commonwealth's Auditors performing such an audit shall do so only after executing nondisclosure agreements reasonably satisfactory to Vendor. Vendor shall use all commercially reasonable efforts to incorporate the substance of the foregoing provisions of this Section 18.3 regarding audit rights (substituting the name of the Subcontractor for that of Vendor) into any written agreement between Vendor and each Subcontractor. Nothing in this Section 18.3 shall in any way limit the Commonwealth's rights under Section 18.2.

19. CONFIDENTIALITY

19.1 Protection of Confidential Information

Vendor shall:

- (a) strictly maintain the confidentiality of the Confidential Information of the Commonwealth;
- (b) take steps to prevent the use, disclosure, dissemination, or copying of the Confidential Information of the Commonwealth other than as necessary for Vendor to perform its obligations under this Agreement, including developing, implementing, maintaining, and enforcing appropriate policies and procedures to safeguard the Confidential Information of the Commonwealth;
- (c) use the same care to prevent disclosure of the Confidential Information of the Commonwealth to third parties as it employs to avoid disclosure, publication, or dissemination of its own confidential information of a similar nature, but in no event less than a reasonable standard of care;
- (d) use the Confidential Information of the Commonwealth solely as necessary and appropriate for the purpose of performing its obligations under this Agreement;
- (e) not acquire any express or implied right or license to any Intellectual Property Right or other right, or assert any lien against, the Confidential Information of the Commonwealth;
- (f) upon the request of the Commonwealth, promptly return, or provide a copy of, as the Commonwealth directs, Confidential Information of the Commonwealth (provided that Vendor may retain such Confidential Information as it requires in order to perform the Services for so long as it is required to perform such Services); and
- (g) use all commercially reasonable efforts to inform its employees, agents, and subcontractors who perform duties with respect to this Agreement about the restrictions with regard to Confidential Information set forth in this Section 19.

Notwithstanding anything to the contrary contained elsewhere in this Section 19, Vendor may disclose Confidential Information of the Commonwealth to its employees, agents, and subcontractors who have: (i) a bona fide need to know such Confidential Information in order to perform their assigned duties; and (ii) a legal duty to protect the Confidential Information that is substantially equivalent to the obligations of confidentiality imposed upon Vendor hereunder. Vendor assumes full responsibility for the acts or omissions of its subcontractors and employees with respect to Confidential Information of the Commonwealth.

19.2 Required Disclosure

Vendor may disclose Confidential Information to the extent disclosure is required by law or by order of a court or governmental agency. Vendor shall use all commercially reasonable efforts to: (i) maintain the confidentiality of the Confidential Information by giving the Commonwealth prompt notice in order that it has every opportunity to intercede in such process to contest such disclosure; and (ii) cooperate with the Commonwealth to protect the confidentiality of such Confidential Information. The Commonwealth (or to whom such Confidential Information otherwise pertains) shall have the right to obtain a protective order or otherwise protect the confidentiality of such Confidential Information. Each Party shall be responsible for its own costs with respect to the performance of its obligations under this Section 19.2. Notwithstanding anything to the contrary contained elsewhere in this Agreement, either Party may disclose the existence of this Agreement, or the terms of this Agreement, to the extent such disclosure is required to enforce the terms of this Agreement or the rights of such Party hereunder, and as required by the Virginia Freedom of Information Act (“FOIA”) or other applicable laws or regulations.

19.3 Notification

Vendor shall notify the Commonwealth as soon as possible in the event of any disclosure or loss of Confidential Information other than as permitted by this Agreement.

19.4 Injunctive Relief

Vendor acknowledges that any breach of any provision of this Section 19 by Vendor, or by its personnel, agents, or subcontractors, shall cause immediate and irreparable injury to the Commonwealth that cannot be adequately compensated for in damages, and that, in the event of any such breach and in addition to all other remedies available at law or in equity, the Commonwealth shall be entitled to obtain injunctive relief from any court of competent jurisdiction, without bond or other security.

19.5 Return of Confidential Information

Unless expressly authorized by this Agreement to retain the Commonwealth’s Confidential Information, and upon either termination or expiration of the Term of this Agreement or the request of the Commonwealth, Vendor shall promptly return or destroy, at the Commonwealth’s option, the Commonwealth’s Confidential Information and all copies thereof, including, to the extent containing Confidential Information, materials prepared in whole or in part based on such Confidential Information, and all copies thereof. Following such return or destruction, an officer of Vendor shall certify to the Commonwealth that it no longer has in its possession or under its control any of such Confidential Information of the Commonwealth in any form whatsoever, or any copy thereof. Notwithstanding anything to the contrary in Section 19.7, to the extent and for so long as such return or destruction is infeasible (e.g., with regard to Confidential Information of the Commonwealth retained in the memories of Vendor’s employees), the protections of this Section 19 shall continue to apply to such Confidential Information.

19.6 Confidentiality Agreements

Vendor shall require each of its agents and Subcontractors providing Services hereunder to execute an agreement, in form and substance acceptable to the Commonwealth (a “Confidentiality Agreement”), under which such agents or Subcontractors agree to appropriately protect the Commonwealth’s Confidential Information and to fulfill any other confidentiality obligations necessary to the performance of Vendor’s obligations hereunder. Vendor covenants that each of its employees performing Services shall be subject to the terms of an employment agreement that requires him or her to protect Vendor’s clients’ confidential information, including the Confidential Information of the Commonwealth, and that offers no less degree of protection than that which is required hereunder.

19.7 Duration

The obligations of the Parties with respect to Confidential Information, as are set forth in this Section 19, shall remain in force and effect at all times during the Term and (i) with respect to Confidential Information that constitutes a trade secret under applicable law, for so long as such trade secret status is maintained; and (ii) with respect to Confidential Information that does not constitute a trade secret, for three (3) years after termination or expiration of the Term of this Agreement (or for the maximum amount of time permitted under applicable law, if shorter than three (3) years).

20. LEGAL COMPLIANCE

20.1 General

Each Party shall at all times perform its obligations hereunder in compliance in all material respects with all applicable federal, state, local, and foreign laws and regulations of all applicable foreign and domestic jurisdictions, and in such a manner as not to cause the other Party to be in material violation of any applicable laws or regulations including any applicable requirements of any federal, state, local, or foreign authority regulating health, safety, employment, civil rights, the environment, Hazard Materials, privacy, confidentiality, security, exportation, or telecommunications.

20.2 Federal Funding

Without limiting the generality of the foregoing section, Vendor shall at all times comply with all applicable federal laws, rules, regulations, guidelines, and mandates relating to the allocation of federal funds provided or granted to the Commonwealth, including Office of Management and Budget OMB Circular A-87, revised 5/10/04, as amended or superseded. Vendor shall maintain familiarity with such federal laws, rules, regulations, guidelines, and mandates and shall notify the Commonwealth of any new or modified federal laws, rules, regulations, guidelines, and mandates that impact the Services or the Commonwealth’s allocation of federal funds.

20.3 Permits and Licenses

Except for approvals, permissions, permits, or licenses required by state or federal statute, ordinance, regulation, or other law to be obtained by the Commonwealth (including those required, if any, to permit the Commonwealth to enter into this Agreement), or as expressly provided otherwise elsewhere in this Agreement, Vendor shall obtain and maintain, at its own expense, all approvals, permissions, permits, licenses, and other forms of documentation required in order for the Parties to comply with all existing state or federal statutes, ordinances, regulations, and other laws that are applicable to Vendor's performance of Services hereunder. The Commonwealth reserves the right to reasonably request and review all such applications, permits, and licenses prior to the commencement of performance of any Services hereunder, and Vendor shall promptly comply and cooperate with any such request. Notwithstanding the foregoing, the Commonwealth shall be solely responsible for monitoring, and compliance with, the substantive laws, rules, and regulations applicable to its business.

20.4 Prevailing Wage Rates

Vendor shall pay to each of its employees, and shall require each Subcontractor to pay to such Subcontractor's employees, the general prevailing rate of wages in the locality in which work is to be performed, according to each craft or type of workperson or employee performing such work and in accordance with the applicable published wage rates issued by the appropriate governmental agency. All contractors working for the Commonwealth, including Vendor and its Subcontractors, must abide by the all applicable state and local laws, rules, regulations, and ordinances regarding employment, wage rates, and employment of in-state residents.

20.5 Debarment and Suspension

Vendor certifies that it, its Affiliate and Subcontractors, including any officers or principals therefor:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any state or federal department or agency;

(b) Have not, within the three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against any of them for: the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction; violation of federal or State anti-trust statutes; or the commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, State or local) with commission of any of the offenses described in paragraph (b); and

(d) Have not, within the three (3) year period preceding this Agreement, had one or more public transaction (federal, State or local) terminated for cause or default.

During the Term of this Agreement, in the event Vendor, or any of its Subcontractors, including any officers or principals thereof, is or becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity (federal, State or local) or are indicted, charged or convicted, or have a civil judgment rendered against them for any offenses described in subsection (b), above, then: (i) Vendor shall immediately provide VITA with a reasonably detailed written notice of such fact; and (ii) this Agreement may be terminated, at the Commonwealth's option, and such termination shall not be subject to an Exit Fee.

20.6 Nonvisual Access to Technology

All information technology which, pursuant to this Agreement, is purchased or upgraded by Vendor for the use of any Eligible Customer shall comply with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended, and as required by Va. Code § 2.2-2012(A). If requested, Vendor shall provide a detailed explanation of how compliance with Section 508 of the Rehabilitation Act is achieved and a validation of concept demonstration. Without limiting the foregoing, all such information technology shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this Agreement:

(a) Effective, interactive control and use of the technology shall be readily achievable by nonvisual means;

(b) The technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the technology interacts;

(c) Nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and

(d) The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the Eligible Customer determines that (i) the applicable technology is not available with nonvisual access because the essential elements of such technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software, or peripheral devices used for nonvisual access is not required when the applicable technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

The requirements of this Section shall be construed to achieve full compliance with the Information Technology Access Act, §§2.2-3500 through 2.2-3504 of the Code of Virginia.

20.7 Non-Discrimination

During the Term, Vendor hereby agrees as follows:

(i) Vendor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of Vendor. Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, including the names of all contracting agencies with which Vendor has contracts of over \$10,000.

(ii) Vendor will, in all solicitations or advertisements for employees placed by or on behalf of Vendor, state that such Vendor is an equal opportunity employer. However, notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of Va. Code § 2.2.-4201.

(iii) Vendor shall include the provisions of subdivisions (i) and (ii) in every subcontract or purchase order of over \$10,000, so that such provisions shall be binding upon each Subcontractor or third-party vendor.

21. REPRESENTATIONS, WARRANTIES, AND COVENANTS

21.1 By Vendor

21.1.1. Preparation

Vendor represents that: (i) it has had sufficient access to, and opportunity to inspect, all material components, workings, capabilities, procedures, and capacities of the Commonwealth's networks, equipment, hardware, and Software associated with the provision of the Services and Deliverables, and the operation, support, and maintenance of the Systems, and for full and complete analysis of the Commonwealth's requirements in connection therewith (as specified in this Agreement); (ii) it has performed sufficient due diligence investigations regarding the scope and substance of the Services, the Systems, and the Deliverables; (iii) it has received sufficient answers to all questions that it has presented to the Commonwealth regarding the scope and substance of the Services, the Systems, and the Deliverables; and (iv) it is capable in all respects of providing the Services and Deliverables, and of operating, supporting, and maintaining the Systems, in accordance with this Agreement. Vendor hereby waives and releases any and all claims that it now has or hereafter may have against the Commonwealth based upon any inaccuracy or incompleteness of the information it has received with regard to the scope and substance of the Services, the Systems, or the

Deliverables. Further, Vendor covenants that it shall not seek any judicial rescission, cancellation, termination, reformation, or modification of this Agreement or any provision hereof, nor any adjustment in the Fees to be paid for the Services, based upon any such inaccuracy or incompleteness of information except where such information was willfully withheld or intentionally misrepresented by the Commonwealth.

21.1.2. Services

Vendor warrants that: (i) the Services shall be performed, and all Deliverables and other materials prepared and delivered, in a timely, professional, workperson-like, diligent, efficient manner and in accordance with the highest recognized professional standards and practices of quality and integrity in the industry and with the performance standards and Specifications provided or required by this Agreement; (ii) it shall perform all Services that may be necessary to accomplish the work required to be performed hereunder in accordance with this Agreement and that its charges for doing so shall consist, solely and entirely, of the Fees set forth in this Agreement, unless otherwise specifically agreed to in writing by the Commonwealth; and (iii) Vendor Personnel (including Vendor's Relationship Manager, the Key Personnel and the Managed Employees), Vendor's Subcontractors, and any other Person or individual employed or engaged by Vendor in connection with this Agreement, shall be fully familiar with the technology and methodologies used to perform the Services and shall have the requisite ability, expertise, knowledge, and skill, as appropriate to the duties assigned, to perform the Services, provide the Deliverables, and develop, implement, support, and maintain the Systems, in such a manner and in accordance with such standards, practices, and Specifications. Vendor further warrants that no amendment to this Agreement, nor any additional cost or expense other than the Fees, as set forth herein, shall be necessary or required during the Term in order for Vendor to perform the Services in accordance with all terms and conditions of this Agreement (including the Service Levels).

21.1.3. Documentation

Vendor warrants that: (i) all Documentation and related materials concerning the Services, the Systems, or the Deliverables shall be complete and shall accurately describe such Services, Systems, or Deliverables so as to enable a reasonably capable IT professional to readily understand and utilize all aspects thereof for all purposes for which they were intended and provided or produced and so as to allow the Commonwealth, or its designee, to fully assume and continue the provision of the Services or the Deliverables, or the operation of the Systems; (ii) the Services, the Systems, and the Deliverables shall not contain any undocumented material features of any kind whatsoever; and (iii) all Documentation associated with enhancements to or updates of the Services, the Systems, or the Deliverables shall be of quality, detail, and usefulness equal to, or greater than, that of the initial Documentation for such Services, Systems, and Deliverables.

21.1.4. Deliverables

Vendor represents and warrants that the Deliverables and any other goods provided under this Agreement are and shall be: (i) free of liens or encumbrances; and

(ii) merchantable and suitable for the purposes specifically described in herein, as applicable. Vendor shall indemnify, defend, and hold the Commonwealth Indemnitees harmless from and against liability, loss, damage, and expense, including reasonable attorneys' fees and out-of-pocket expenses, incurred or sustained by any of them to the extent caused by, or resulting from, any failure of such Deliverables and goods to conform to the foregoing warranty or by or from Vendors', or its Affiliates' or Subcontractors', faulty performance of work, negligence, willful misconduct, or unlawful acts, or non-compliance with any applicable federal, state, or local laws, codes, regulations, rules, ordinances, orders, or statutes, including the Occupational Safety and Health Act. Vendor further warrants and covenants that the Deliverables containing a Software Component shall comply with the Documentation and the Specifications in all material respects and will provide the functions and features and operate in the manner described in this Agreement or otherwise agreed by the Parties. Vendor shall, as quickly as possible, correct any failure of the Deliverables to so comply. If Vendor fails or is unable to repair or replace such non-conforming Deliverables, the Commonwealth, in addition to and not in lieu of any other remedies available to it hereunder, may obtain from Vendor the Source Code for such Deliverable.

21.1.5. Proprietary Rights Infringement

Vendor warrants that at no time during the Term shall any services, techniques, materials, or products provided or used by Vendor, or its Affiliates or Subcontractors, in performing the Services, providing the Deliverables, or developing, implementing, supporting, and maintaining the Systems (except for the Commonwealth Software), or the use thereof by the Commonwealth, infringe upon any third party's Intellectual Property Rights, and that Vendor shall at no time misappropriate any trade secrets, or make use of any misappropriated trade secrets, in connection with performance of Services hereunder. In the event that Vendor becomes aware that any of such services, techniques, materials, or products, or the use thereof, infringes, or is alleged to infringe, upon any third party's Intellectual Property Right, or contains or makes use of any misappropriated trade secret, then Vendor shall promptly notify and cooperate with the Commonwealth, and take such further actions as reasonably requested by the Commonwealth, in accordance with Section 22. To the extent permitted by the applicable third party agreement, Vendor warrants that it shall pass through to the Commonwealth all covenants, representations, or undertakings of any third party with regard to infringement or misappropriation of Intellectual Property Rights by Software or equipment that is provided by Vendor through such third party and that is used in connection with this Agreement.

21.1.6. Authority and Approvals

Vendor represents that: (i) it is a corporation duly formed and in good standing under the laws of the [State of _____]; (ii) it is qualified and registered to transact business in the [State of _____] and all locations where the performance of its obligations hereunder would require such qualification; (iii) it has all necessary rights, powers, and authority to enter into and perform under this Agreement; (iv) the execution, delivery, and performance of this Agreement by Vendor have been duly authorized by all necessary corporate action; (v) the individual executing this Agreement on behalf of and for Vendor is an authorized agent of

Vendor who has actual authority to bind Vendor to each and every Section and obligation of this Agreement and that all requirements of Vendor have been fulfilled to bestow such actual authority upon such individual; (vi) the execution and performance of this Agreement by Vendor shall not violate any domestic or foreign law, statute, or regulation and shall not breach any agreement, covenant, court order, judgment, or decree to which Vendor is a party or by which it is bound; (vii) it has, and covenants that it shall maintain in effect, all governmental licenses and permits necessary for it to provide the Services and Deliverables, and develop and implement the Systems, as contemplated by this Agreement; and (viii) that Vendor owns or leases, and covenants that it shall own or lease, or have the right to use, free and clear of all liens and encumbrances, other than lessors' interests, or security interests of Vendor's lenders, appropriate right, title, or interest in and to the tangible property that Vendor intends to use or uses to provide the Services and Deliverables and to develop and implement the Systems in accordance herewith. Vendor covenants that it shall use all commercially reasonable efforts to obtain, and cooperate with and assist the Commonwealth in obtaining, any clearances and approvals of the Commonwealth's customers that are necessary to permit the New Vendor Personnel, and any other former Commonwealth employees who are hired by Vendor, to continue working on such customers' projects on and after the Service Commencement Date, except that the Commonwealth shall be responsible for any costs associated with obtaining such clearances and approvals.

21.1.7. Pending Litigation

Vendor represents that, as of the Effective Date: (i) there is no outstanding or anticipated civil or criminal litigation, arbitrated matter, or other dispute, in any forum, to which Vendor or any of its Affiliates is a party that, if decided unfavorably to Vendor or its Affiliates, would reasonably be expected to have a potential or actual material adverse effect on Vendor's ability to fulfill its obligations hereunder; and (ii) Vendor knows of no basis that might give rise to any such litigation, arbitration, or other dispute in the foreseeable future. Vendor warrants that it shall notify the Commonwealth, within fifteen (15) days after Vendor first learns of or reasonably anticipates any such litigation, arbitration, or other dispute. Vendor further warrants that it shall notify the Commonwealth by electronic mail within forty-eight (48) hours after Vendor is served with any process in connection with this Agreement, including any subpoena of Vendor's records, and that it shall send a written notice of any such service, together with a copy of the same, to the Commonwealth within seventy-two (72) hours after receiving such service, in accordance with the notice provisions of Section 27.4. Any failure of Vendor to so notify the Commonwealth of any such pending or anticipated litigation, arbitration, or dispute, or service of process, within the timeframes set forth in this Section 21.1.7, shall constitute an incurable and material breach of a material term of this Agreement by Vendor.

21.1.8. Compliance with Laws

Vendor warrants that, in performing the Services, preparing and providing the Deliverables, and developing, integrating, implementing, supporting, and maintaining the Systems, Vendor shall comply, and allow and enable the Commonwealth to comply, and not prevent the Commonwealth from complying, with all applicable laws, regulations, and policies, including: (i) all applicable immigration and labor laws and

regulations; (ii) all laws, regulations, and policies related to fair employment, employment of the handicapped and minorities and women, and the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin, or physical handicap; (iii) all applicable data protection, nondisclosure, and privacy laws of any relevant jurisdiction; and (iv) all applicable policies and procedures of the Commonwealth.

21.1.9. Existing Violations

Vendor represents that, as of the Effective Date, it is not in violation or material non-compliance with any laws, ordinances, statutes, rules, regulations, or orders of governmental or regulatory authorities to which it is subject, and that it has not failed to obtain any licenses, permits, franchises, or other governmental authorizations necessary for the ownership of its properties or the conduct of its business, to the extent that any such violation, non-compliance or failure, either individually or in the aggregate, might adversely affect Vendor's business, properties, or financial condition, the consummation of the transactions contemplated by this Agreement, or the performance of Vendor's obligations hereunder.

21.1.10. Misrepresentations

Vendor represents and certifies that it and its Subcontractors have not made, in any written or oral communication with or provided to the Commonwealth (including the Proposals or the negotiation of this Agreement), any material misrepresentations (whether through any untrue statement of a material fact or an omission of any material fact necessary to make such communication not misleading) regarding or concerning Vendor or any of Vendor's Subcontractors, or, individually or collectively: (i) their capabilities as competent, qualified, experienced providers of IT services; (ii) their abilities to, or the manner in which they shall, perform the Services, provide the Deliverables, and develop, implement, operate, support, and maintain the Systems, in accordance with this Agreement; (iii) their businesses, operations, or financial condition or any financial statements, reports, and other similar materials or information furnished to the Commonwealth in connection herewith; or (iv) any of the specific Services to be performed or Deliverables to be provided hereunder.

21.1.11. Financial Condition

Vendor represents that it has, and warrants that it shall maintain, a financial condition commensurate with its obligations under this Agreement and sufficient to allow it to readily and successfully fulfill all such obligations, in accordance with this Agreement. Vendor further warrants that, in the event the financial condition of Vendor changes during the Term in such a manner as to adversely affect Vendor or jeopardize its ability to satisfy the warranty set forth in the immediately preceding sentence, Vendor shall promptly notify the Commonwealth in writing, reasonably describing the nature and extent of such change.

21.1.12. Conflict of Interest

Vendor represents, warrants, and covenants that:

21.1.12.1 No Financial Interest

Neither Vendor nor any of its Affiliates or Subcontractors, nor any employee of any of the foregoing, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Vendor's performance of its duties and obligations under this Agreement, or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement; and Vendor shall promptly inform the Commonwealth of any such interest that may be incompatible with the interests of the Commonwealth;

21.1.12.2 No Abuse of Authority for Financial Gain

Neither Vendor nor any of its Affiliates or Subcontractors, nor any employee of any of the foregoing, has used or shall use the authority or position provided, or to be provided, under this Agreement to obtain financial gain for Vendor, or any such Affiliate, Subcontractor or employee, or for a member of the immediate family of any such employee;

21.1.12.3 No Use of Information for Financial Gain

Neither Vendor nor any of its Affiliates or Subcontractors, nor any employee of any of the foregoing, has used or shall use any Commonwealth Confidential Information acquired in the award or performance of the Agreement to obtain financial gain for Vendor, or any such Affiliate, Subcontractor or employee, or for a member of the immediate family of any such employee;

21.1.12.4 Independent Judgment

Neither Vendor nor any of its Affiliates or Subcontractors, nor any employee of any of the foregoing, has accepted or shall accept another Commonwealth contract that would impair the independent judgment of Vendor in the performance under this Agreement;

21.1.12.5 No Influence

Neither Vendor nor any of its Affiliates or Subcontractors, nor any employee of any of the foregoing, has accepted or shall accept anything of value based on an understanding that the actions of Vendor, or those of any such Affiliate, Subcontractor or employee, on behalf of the Commonwealth would thereby be influenced; and Vendor shall not attempt to influence any Commonwealth employee by the direct or indirect offer of anything of value;

21.1.12.6 No Payment Tied to Award

Neither Vendor nor any of its Affiliates or Subcontractors, nor any employee of any of the foregoing, has paid or agreed to pay any Person, other than bona

bona fide employees working solely for Vendor or any such Affiliate or Subcontractor, any fee, commission, percentage, brokerage fee, gift, or any other consideration, that is contingent upon or would result from the award or execution of this Agreement; and

21.1.12.7 Independent Prices

The prices and other materials presented in the Proposals were arrived at independently, without (for the purpose of restricting competition) consultation, communication, agreement, or otherwise conspiring with any other Person who submitted a proposal; the prices quoted were not knowingly disclosed by Vendor to any other proposer; and no attempt was made by Vendor to induce any other Person to submit or not to submit a proposal for the purpose of restricting competition.

21.1.13. Covenant Against Contingent Fees

Vendor warrants that no Person or selling agency has been employed, engaged, or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Vendor for the purpose of securing business. Any breach or violation of the foregoing warranty shall constitute an incurable and material breach of this Agreement by Vendor. Further, in such event, the Commonwealth may, in the Commonwealth's sole discretion, deduct from any Fees or other amounts due or payable to Vendor hereunder, or otherwise recover from Vendor, the full amount of such commission, percentage, brokerage, or contingent fee that such Person received from Vendor.

21.1.14. Confidentiality Agreements

Vendor represents that, as of the Effective Date, Vendor has not violated or in any way breached the terms of any confidentiality agreement entered into with the Commonwealth prior to such time.

21.1.15. Maintenance

Vendor represents, warrants and covenants that it shall maintain all Machines and Software so that they operate in accordance with the Service Levels and their manufacturer specifications, including: (i) maintaining Machines and Software in good operating condition; (ii) equipping Machines with appropriate speed processors, sufficient quantity of processors, sufficient memory and storage media; (iii) undertaking repairs and preventative maintenance on Machines in accordance with the applicable manufacturer's recommendations; and (iv) performing Software maintenance and configuration in accordance with the applicable Software documentation and recommendations.

21.1.16. Efficiency

Vendor represents, warrants and covenants that it shall use commercially reasonable efforts to provide the Services in the most efficient and cost-effective manner consistent with the performance and quality of the Services required by this Agreement.

21.2 By the Commonwealth

21.2.1. Authority

The Commonwealth represents that: (i) it has all necessary rights, powers, and authority to enter into and perform under this Agreement, and (ii) the execution, delivery, and performance of this Agreement by the Commonwealth have been duly authorized by all necessary Commonwealth action.

21.2.2. Commonwealth Disclaimer

Except as otherwise expressly stated in this Agreement, the Commonwealth does not make any representation or warranty, express or implied, with respect to: (i) the Services or any component or portion thereof; (ii) the skills, capabilities, or medical or other condition of any of the Affected Employees or the Managed Employees; or (iii) the hardware, Software, equipment, networks, and other IT-related assets or materials made available or conveyed by the Commonwealth to Vendor under this Agreement, all of which assets and materials are made available or conveyed to Vendor “AS IS, WHERE IS,” without warranties of any kind with respect to the condition, capabilities, or other attributes thereof.

21.3 Warranty Disclaimer

EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT: (i) THERE ARE NO EXPRESS WARRANTIES MADE BY EITHER PARTY; (ii) THERE ARE NO IMPLIED WARRANTIES OR CONDITIONS, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTIES OTHERWISE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE; AND (iv) ALL SUCH IMPLIED WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED AND EACH PARTY HEREBY WAIVES AND RELEASES ANY CLAIM TO ANY SUCH IMPLIED WARRANTIES.

22. INDEMNIFICATION

22.1 By Vendor

22.1.1. Infringement

Subject to the provisions of Section 22.4, Vendor shall indemnify, defend, and hold the Commonwealth Indemnitees harmless from and against any and all Losses related to claims or demands brought by any third party against any of them for any actual or alleged infringement of any Intellectual Property Right, including misappropriation of trade

secrets, to the extent (i) based upon technology used by Vendor (and not owned or provided by the Commonwealth) in providing the Services or the Deliverables or developing and implementing the Systems, or (ii) arising from the Commonwealth's use of the Services, Deliverables and/or the Systems consistent with this Agreement (each such claim or demand, an "Infringement Claim"). In the event of an Infringement Claim, Vendor may, in its reasonable discretion, either procure a license to enable the Commonwealth to continue to use or receive the benefit of such technology, or develop or obtain a non-infringing substitute reasonably acceptable to the Commonwealth. Notwithstanding anything to the contrary elsewhere in this Agreement, Vendor shall have no obligation to indemnify, defend, or hold the Commonwealth Indemnitees harmless regarding any claim or action to the extent that it is based upon: (i) a modification of a program or machine by the Commonwealth that was not otherwise approved by Vendor; (ii) the Commonwealth's combination, operation, or use of Vendor technology with apparatus, data, or programs neither furnished nor approved by Vendor; (iii) the use by the Commonwealth of any Software or other technology provided by Vendor or any third party (including the Vendor Software and the Third-Party Software) other than in accordance with the applicable licenses; or (iv) Vendor's use, in accordance with this Agreement, of Commonwealth Software.

22.1.2. Employment Claims

Subject to the provisions of Section 22.4, Vendor shall indemnify, defend, and hold the Commonwealth Indemnitees harmless from and against any and all Losses related to claims or demands: (i) by any of Vendor's or its Subcontractors' employees or former employees (including any of the Affected Employees, Managed Employees or the Retained Personnel that are hired by Vendor or its Subcontractors) to the extent based upon or resulting from any act or omission of Vendor or its Subcontractors on or after the date such individual accepts employment with and is employed by Vendor or its Subcontractors, or in connection with such individual's termination of employment by, or other separation from, Vendor or its Subcontractors, including any allegation that such employee was wrongfully terminated by Vendor or its Subcontractors or was denied any Vendor- or Subcontractor-provided severance or termination payment upon leaving the employ of Vendor or its Subcontractors, or any allegation that Vendor or any of its Subcontractors violated any federal, state or local laws or regulations for the protection of an individual or of individual members of a protected class or category of persons; or (ii) by any of the Managed Employees to the extent based upon or resulting from any act or omission of Vendor or its Subcontractors during the period such individual is provided to Vendor for purposes of performing the Services.

22.1.3. Third Party Services

Without limiting Vendor's obligations with respect to insurance as provided in Section 23 hereof, and subject to the provisions of Section 22.4, Vendor shall indemnify, defend, and hold the Commonwealth Indemnitees harmless from and against any and all Losses related to claims or demands by any third party against any of them the extent based upon or arising out of: (i) an alleged breach by Vendor of any agreement with such third party (including employment agreements or subcontracts and any other agreement for the provision of third-party services); (ii) any action brought by any Vendor Person or Subcontractor seeking to

be treated as an the Commonwealth employee or claiming entitlement to any the Commonwealth employee benefits other than with regard to periods during which they were actually employed by the Commonwealth; (iii) any action seeking to declare the Commonwealth as a joint employer with Vendor of any such Vendor Person or Subcontractor; (iv) any determination resulting from or pursuant to any arbitration proceeding, court proceeding by a court of competent jurisdiction, administrative proceeding, or other similar proceeding, that the Commonwealth was the employer of, or, together with Vendor, was the joint employer of, any such Vendor Person or Subcontractor, except with regard to periods during which such Persons actually were employed by the Commonwealth; or (v) theft, fraud, or misappropriation of tangible or intangible personal property by Vendor or any Subcontractor, or by the officers, directors, Affiliates, employees, agents, representatives, or subcontractors of any of the foregoing

22.1.4. Misinformation

Subject to the provisions of Section 22.4, Vendor shall indemnify, defend, and hold the Commonwealth Indemnitees harmless from and against any and all Losses related to claims or demands by any third party against any of them to the extent arising out of, or resulting from, the negligent or willful dissemination by Vendor or Vendor's Subcontractors (or by any personnel assigned by Vendor or Vendor's Subcontractors to perform any of Vendor's obligations under this Agreement) of false, incomplete, or incorrect information, information that the Commonwealth directed Vendor not to disseminate, or information that Vendor reasonably should have known not to disseminate, or resulting from Vendor's or Vendor's Subcontractor's negligent or willful failure to disseminate information that Vendor is obligated to provide to the Commonwealth's users, customers, or potential customers pursuant to this Agreement, whether through any help-desk facility or any other Services in which Vendor has direct contact with any such third parties. By way of illustration, if Vendor's or its Subcontractor's worker, in providing help-desk Services, negligently or purposefully gave false or incorrect information to a customer of the Commonwealth, who then made a claim against the Commonwealth for damages sustained because such customer acted in reliance upon such information received from Vendor's or its Subcontractor's worker, Vendor would be obligated to indemnify the Commonwealth for that claim pursuant to this Section 22.1.4.

22.1.5. Injury or Property Damage

Without limiting Vendor's obligations with respect to insurance as provided in Section 23 hereof, and subject to the provisions of Section 22.4, Vendor shall indemnify, defend, and hold the Commonwealth Indemnitees harmless from and against any and all Losses related to claims or demands by any third party against any of them for or alleging bodily injury, including death, or damage to tangible personal or real property, to the extent that such injury or damage arises out of, or results from, the negligence, willful misconduct, or violations of law by Vendor, any of Vendor's employees or agents, or Vendor's Subcontractors and their employees and agents.

22.1.6. Hazardous Materials

Subject to the provisions of Section 22.4, Vendor shall indemnify, defend, and hold the Commonwealth Indemnitees harmless from and against any and all Losses related to claims or demands by any third party against any of them to the extent based upon or resulting from: (i) Vendor's or its Subcontractor's failure to comply with applicable Environmental Laws; or (ii) the presence of any Hazardous Material upon, above, or beneath Vendor's or its Subcontractor's facilities or locations from which Services are provided, except to the extent that such Hazardous Material was present at the time that Vendor or its Subcontractors took over the use, occupation, and operation of such location or facility from the Commonwealth, if applicable, or if such Hazardous Material was released into the environment by the Commonwealth.

22.1.7. Commonwealth Data or Proprietary Information

Subject to the provisions of Section 22.4, Vendor shall indemnify, defend, and hold the Commonwealth Indemnitees harmless from and against any and all Losses related to claims or demands brought by any third party against any of them arising from Vendor's breach of its obligations with respect to Commonwealth Data and Commonwealth Confidential Information.

22.1.8. Disposal of Purchased Assets

Subject to the provisions of Section 22.4, Vendor shall indemnify, defend, and hold the Commonwealth Indemnitees harmless from and against any and all Losses related to claims or demands by any third party that Vendor disposed of any of the Purchased Assts in violation of the terms of this Agreement or of any applicable federal, state, or local environmental law, regulation, or ordinance.

22.1.9. Representations, Warranties and Covenants

Subject to the provisions of Section 22.4, Vendor shall indemnify, defend, and hold the Commonwealth Indemnitees harmless from and against any and all Losses related to claims or demands brought by any third party against any of them arising from Vendor's breach of any of its representations, warranties or covenants under this Agreement.

22.1.10. Affiliate, Subcontractor, and Assignee Claims

Subject to the provisions of Section 22.4, Vendor shall indemnify, defend, and hold the Commonwealth Indemnitees harmless from and against any and all Losses related to any claim, other than a claim for indemnification under this Agreement, initiated by a Vendor Affiliate or Subcontractor or other entity asserting rights under this Agreement.

22.1.11. Vendor Personnel

Subject to the provisions of Section 22.4, Vendor shall indemnify, defend and hold the Commonwealth Indemnitees harmless from and against any and all claims, liabilities, losses, costs, damages, and expenses, including attorney's fees, and out-of-pocket expenses reasonably incurred in connection with the investigations and defense of such claims, to the extent based upon or related to a claim that Vendor's or its Subcontractors' employees are employees of the Commonwealth.

22.2 Subrogation

If Vendor shall be obligated to indemnify a Commonwealth Indemnitee pursuant to this Section 22, Vendor shall, upon payment of such indemnity in full, be subrogated to all rights of the Commonwealth Indemnitee with respect to the claims and defenses to which such indemnification relates.

22.3 Setoff

The Commonwealth may set off against, and deduct from, any and all amounts otherwise payable to Vendor pursuant to any of the provisions of this Agreement, any and all amounts owed by Vendor to any of the Commonwealth Indemnitees under this Section 22. Upon the exercise of such right of setoff, the Commonwealth shall notify Vendor in writing of the extent to which such right has been asserted.

22.4 Procedures

If any legal action governed by this Section 22 is commenced against an Indemnitee, (i) the Indemnitee shall provide Vendor prompt, written, and reasonable notice of such legal action subject to indemnification, (ii) the Indemnitee shall grant Vendor the right to control the defense of the same, and (iii) the Indemnitee shall provide its reasonable cooperation with Vendor in defense of the claim, including providing information and assistance in defending the claim. Failure to give prompt notice shall not, however, reduce Vendors's obligations under this Section 22, except to the extent it is prejudiced thereby. Nothing herein shall restrict the Indemnitee from participating in the defense of the claim at its own cost and expense with counsel of its own choosing. No settlement of a claim may be entered into by Vendor on behalf of the Indemnitee which includes obligations to be performed by the Indemnitee (other than payment of money that will be fully paid by Vendor) without the Indemnitee's prior written approval.

23. INSURANCE

23.1 General Requirements

Vendor shall purchase and maintain insurance to protect Vendor from claims of the types set forth below that arise out of or result from the performance of the Services, or other performance or operations of Vendor, under or in connection with this Agreement and for which

Vendor may be liable, regardless of whether such Services, performance, or operations are provided by Vendor directly or by any of Vendor's agents, consultants, suppliers, or Subcontractors, by anyone directly employed by any of the foregoing, or by anyone else for whose acts or omissions Vendor may be liable.

23.2 Coverages

The insurance required hereunder shall be: (i) maintained by Vendor at all times during the Term and for at least four (4) years after the last date on which Vendor provides Services (including any Disentanglement Services) pursuant to this Agreement; and (ii) written for not less than the greater of the limits of coverage specified herein or the limits of coverage required by law in any jurisdiction with authority over Vendor's operations or performance. Such insurance coverage shall be written on an occurrence basis and shall include at least the following:

(a) Worker's Compensation and Employers Liability Insurance affording compensation benefits for all employees in an amount sufficient by virtue of the laws of the state or jurisdiction in which the Services or any portion of the Services are performed and employers' liability insurance with limits of not less than Five Million Dollars (\$5,000,000) for each accident or disease;

(b) Commercial General Liability Insurance with a combined single limit of not less than Five Million Dollars (\$5,000,000) per occurrence and Ten Million Dollars (\$10,000,000) in the aggregate for personal injury, bodily injury (including wrongful death) and property damage liability, including coverage for all premises and operations, broad form property damage, independent contractors, contractual liability, personal injury and advertising injury, product/completed operations coverage, and a severability of interest clause;

(c) Automobile Liability Insurance with combined single limit of not less than Five Million Dollars (\$5,000,000) per occurrence for injuries, including accidental death and property damage;

(d) Umbrella or Excess Liability Insurance, with limits of not less than Ten Million Dollars (\$10,000,000) per occurrence, that provides additional coverage and combined higher limits for employers' general liability and automobile liability insurance;

(e) Professional Liability Insurance with limits of not less than Ten Million Dollars (\$10,000,000) per claim; and

(f) Employee Dishonesty and Computer Fraud Insurance with limits of not less than Ten Million Dollars (\$10,000,000) per occurrence.

Whenever insurance policies are renewed or replaced, Vendor shall cause the policy retroactive date to coincide with, or precede, the Effective Date of this Agreement.

23.3 Specific Requirements

Vendor shall abide by and comply with the following terms for all insurance coverage required by this Section 23.

(a) All such insurance shall provide coverage on the basis of occurrences during the policy period, and not on the basis of claims made during the policy period.

(b) Vendor shall provide insurance coverage by insurance companies acceptable to the Commonwealth that have policyholder ratings no lower than “A-” and financial ratings not lower than “VIII” in the latest edition of Best’s Insurance Guide in effect as of the Effective Date. Such insurance shall be written with insurers of good standing and licensed to do business in the Commonwealth of Virginia.

(c) Vendor shall verify that all of Vendor’s agents, consultants, suppliers, and Subcontractors are sufficiently insured against claims arising out of or relating to their performance related to this Agreement, with coverages complying with those required of Vendor pursuant to, and subject to the other requirements of, this Section 23.

(d) The insurance policies described in Section 23.2 shall each name the Commonwealth as an additional insured on a primary basis with respect to liability arising out of or in any way connected with Vendor’s performance under this Agreement.

(e) Each Party hereby waives and shall cause its insurers to waive their rights of subrogation against the other Party, and all of such other Party’s subsidiaries, Affiliates, directors, officers, employees, and elected or appointed officials under the insurance policies described in Section 23.2.

(f) The insurance policy requirements set forth in this Section 23 shall be subject to the laws of the United States and the Commonwealth of Virginia.

(g) The insurance coverages described in this Section 23 shall be primary to and non-contributory with respect to any other insurance or self-insurance that may be maintained by the Commonwealth, and shall contain a cross-liability or severability-of-interest clause, where applicable. The fact that Vendor has obtained the insurance required in this Section 23 shall in no manner lessen nor affect Vendor’s other obligations or liabilities set forth in this Agreement. Within thirty (30) days after the Effective Date, and from time to time during the Term, at the Commonwealth’s reasonable request (but not more frequently than annually), Vendor shall, and shall cause each of its Subcontractors to, supply the Commonwealth with certificates of insurance demonstrating that: (i) all of the insurance required by this Section 23 is in force; (ii) not less than thirty (30) days’ written notice shall be given to the Commonwealth prior to any cancellation or restrictive modification of any such insurance policies; and (iii) the waivers of subrogation required hereunder are in force (except that, if the Commonwealth prefers that Vendor provide a copy of the endorsement that adds the Commonwealth as an additional insured to the applicable policy in lieu of any such certificate of insurance, Vendor shall provide a copy such endorsement within thirty (30) days after the Commonwealth’s request therefor). At

the request of the Commonwealth, Vendor shall, and shall cause its Subcontractors to, promptly provide a certified copy of any insurance policy required under this Agreement.

(h) Any self-insurance, self-retained layer, deductibles, and exclusions in coverage in the insurance policies required by this Section 23: (i) shall be assumed by, for the account of, and at the sole risk of, Vendor; and (ii) as well as any changes in any of the foregoing, must be declared to the Commonwealth. In no event shall Vendor's liability be limited to the extent of the minimum limits of insurance required above.

(i) Vendor shall, at Vendor's expense, carry and maintain at all times, and for so long as any item of Vendor's property is in transit, or in the care, custody, or control of the Commonwealth, an insurance policy or policies covering loss, or destruction of, or damage to any such item of Vendor's property in the amount of the full replacement value thereof providing protection against all perils normally covered in an "all risk" physical damage insurance policy. Vendor shall cause its "all risk" physical damage insurers to waive all rights of subrogation against the Commonwealth, and its directors, officers, agents, and employees for any loss, or destruction of, or damage to any item of Vendor's property that is covered by insurance pursuant to this clause (i) of Section 23.3.

23.4 Performance Bond

Within ten (10) days after the Effective Date, Vendor shall furnish to the Commonwealth a surety bond in the amount of [REDACTED] to guaranty Vendor's faithful performance under this Agreement. Such surety bond shall be on a form supplied by the Commonwealth and shall be duly executed by Vendor and a responsible corporate surety authorized to issue such bonds in the Commonwealth of Virginia, and secured through an authorized agent with an office in the Commonwealth of Virginia and registered therewith. Vendor shall pay all bond premiums, costs, and incidental charges associated with acquisition of such surety bond. If at any time the Commonwealth is unsatisfied with any surety of Vendor's, or if the amount of such bond becomes insufficient, in the Commonwealth's reasonable discretion, the Commonwealth shall so notify Vendor and no further payment of Fees shall be deemed due, or shall be made by the Commonwealth, to Vendor under this Agreement until Vendor obtains a surety, or a surety bond in such amount, as is acceptable to the Commonwealth. The surety bond required by this Section 23.4 shall be valid, and maintained in force and effect, from the Service Commencement Date through the entire Term of this Agreement, including any extensions or renewals of such Term and any periods during which Vendor is required to provide Disentanglement Services hereunder, and for at least two (2) years after any termination or expiration of the Term of this Agreement. The bond shall be returned to Vendor once the Term of this Agreement has expired or been terminated and Vendor has successfully completed all of its obligations to perform Disentanglement Services hereunder, as determined by the Commonwealth in its sole discretion.

24. DISPUTE RESOLUTION

24.1 Dispute

24.1.1. Informal Dispute Resolution

If any Disagreement, other than a dispute involving a claim of breach under Section 19 hereof, arises between the Parties, Vendor's Relationship Manager and the Commonwealth's Relationship Manager shall, within seven (7) business days after receipt by either of notice from the other of such disputed matter, commence efforts to resolve such Disagreement in good faith via the Operations Committee. If the disputed matter has not been resolved by the Relationship Managers within thirty (30) days after first having been referred to the Relationship Managers (or at any earlier time, in the discretion of either Relationship Manager), such dispute may be referred by either Relationship Manager to the Strategy Committee for resolution. If a disputed matter is referred to the Strategy Committee and such disputed matter has not been resolved by, or at the direction of, the Strategy Committee within thirty (30) days after such dispute was first referred to it (or such longer period as agreed to in writing by the Parties), or if a disputed matter shall not have been referred to the Strategy Committee within forty-five (45) days after first having been referred to the Relationship Managers for resolution, then the disputed matter shall be escalated to the Chief Information Officer of the Commonwealth and Vendor's President for resolution. If such disputed matter has not been resolved by, or at the direction of, the Chief Information Officer of the Commonwealth and Vendor's President within thirty (30) days after such dispute was first referred to them (or such longer period as agreed to in writing by the Parties), then such disputed matter shall be submitted to an alternative dispute resolution (ADR) forum in accordance with Section 24.1.2.

24.1.2. Alternative Dispute Resolution (ADR)

The ADR forum shall consist of mandatory, nonbinding mediation. The mediation is to be conducted in accordance with VITA's Administrative Dispute Resolution Policy and administrative rules. The request for ADR may be made by either Party. Within ninety (90) days following the Effective Date, the Parties shall mutually agree upon a list of at least three (3) and no more than five (5) individuals that the Parties accept as possible mediators for purposes of this Agreement. In the event a Disagreement is referred to ADR in accordance with this Section 24, the Commonwealth may select any individual identified on such list to serve as the mediator or such other individual acceptable to both Parties. Periodically during the Term, the Parties shall update the list of possible mediators as appropriate.

24.1.3. Exceptions

In the event the disputed matter is not resolved by ADR, without regard to whether either Party has contested whether the procedures and duties set forth in Sections 24.1.1 or 24.1.2 (including the duty of good faith) have been respectively and properly followed or performed, each Party shall have the right to commence any legal action or proceeding as permitted by law. Neither Party shall be obligated to comply with this Section 24

with regard to breaches, or alleged breaches, of Section 19 hereof, or with regard to any other breach, alleged breach or violation as to which injunctive relief is sought.

24.2 No Termination or Suspension of Services

Notwithstanding anything to the contrary contained elsewhere herein, even if any Disagreement or other dispute arises between the Parties, and regardless of whether or not any such Disagreement or other dispute requires at any time the use of the dispute resolution procedures described above, in no event nor for any reason shall Vendor, at any time during the Term or during Disentanglement, halt, interrupt, or suspend the provision of Services to the Commonwealth or the performance of any of Vendor's obligations related to Disentanglement, refuse to perform any Services or work requested pursuant to an In-Scope Work Request, disable, or otherwise render inoperable or unusable, the Systems (or any component thereof) or any hardware or Software used to provide Services, or perform any other action that prevents, impedes, impairs, reduces, or limits in any way the provision of Services, access to, or operation and use of, the Systems, or the Commonwealth's ability to conduct its business and activities (other than such minimal, routine interruptions as may be necessary and appropriate in order for Vendor to provide the Services), unless: (i) authority to do so is granted by the Commonwealth (or agreed to by the Commonwealth in writing in a Disentanglement Transition Plan) or conferred by a court of competent jurisdiction; or (ii) the Term of this Agreement has been terminated or has expired pursuant to Section 14 and a Disentanglement has been completed to the satisfaction of the Commonwealth. Notwithstanding a termination of the Term of this Agreement by Vendor for the Commonwealth's Default, and even if a Disagreement exists, Vendor shall provide Disentanglement Services in accordance with this Agreement provided that Vendor has (i) paid all outstanding and invoiced amounts not otherwise validly disputed in good faith by the Commonwealth pursuant to Section 24.1, and (ii) paid in advance on a monthly basis for such Disentanglement Services. If this Agreement is terminated due to the Commonwealth's Default and the Commonwealth fails to timely comply with such advance payment obligations regarding Disentanglement, Vendor may suspend its performance of Disentanglement Services only if such failure is not cured within ten (10) days after the Commonwealth's receipt of written notice thereof from Vendor.

24.3 Remedies

The procedures described and remedies provided in this Section 24 shall not be deemed to limit either Party's rights under Section 14 or Section 16. Vendor expressly acknowledges that any breach of any provision of Section 24.2 by Vendor, the Vendor Personnel, or Vendor's Subcontractors shall cause immediate and irreparable injury to the Commonwealth that cannot be adequately compensated for in damages, and that, in the event of any such breach, and in addition to all other remedies available to it, the Commonwealth shall be entitled to obtain injunctive or other equitable relief from any court of competent jurisdiction, without bond or other security.

25. USE OF AFFILIATES AND SUBCONTRACTORS

25.1 General

Except as expressly provided in Section 25.5: (i) Vendor shall not subcontract all or any part of the Service without the prior written consent of the Commonwealth; (ii) each Subcontractor may perform only the specific Services described with regard to such Subcontractor in a written request submitted by Vendor to the Commonwealth when seeking such consent; and (iii) no change may be made to the specific Services performed by a particular Subcontractor, and no substitution, replacement, or change of Subcontractors may be made, without the advance written consent of the Commonwealth. All performance of Services by each Subcontractor shall at all times be in accordance with the terms and conditions of this Agreement. Prior to performing any Services, each Subcontractor shall execute a Confidentiality Agreement in accordance with Section 19.6 hereof. Vendor covenants that its arrangements with Subcontractors shall not prohibit or restrict any such Subcontractor from, at any time, entering into direct agreements with the Commonwealth. Notwithstanding anything to the contrary set forth in this Section 25 or elsewhere in this Agreement, Vendor shall not engage any Subcontractors that are or now or hereafter debarred or suspended from performing services for the Commonwealth of Virginia or the United States government.

25.2 Approval and Removal

The Commonwealth's consent with respect to Vendor's use of a particular proposed Subcontractor, shall be given or withheld in writing within Vendor's reasonably requested timeframe, and, if such consent is withheld, the Commonwealth's notice thereof to Vendor shall set forth the reasons for such withholding of consent. If the Commonwealth determines in good faith and in a commercially reasonable manner that the performance or conduct of any Subcontractor is unsatisfactory, the Commonwealth may notify Vendor of its determination in writing, indicating the reasons therefor, in which event Vendor shall promptly take all necessary actions to remedy the performance or conduct of such Subcontractor or to replace such Subcontractor by another third party or by Vendor personnel. If the Commonwealth determines, in its sole discretion, that the performance or conduct of any Vendor Subcontractor or Affiliate is unsatisfactory, the Commonwealth may notify Vendor of such determination in writing, indicating the reasons therefor, and Vendor shall promptly take all necessary actions to remedy the performance or conduct of such Subcontractor or Affiliate and, if so requested by the Commonwealth, to promptly replace such Subcontractor or Affiliate.

25.3 Responsibility and Liability

Vendor shall be solely and exclusively responsible for supervising the activities and performance of each Subcontractor. Vendor and each such Subcontractor shall be jointly and severally responsible for any act or omission of such Subcontractor. Notwithstanding the fact that a Subcontractor or Affiliate of Vendor may be the party actually performing a particular Service or providing a particular Deliverable hereunder, Vendor shall at all times: (i) constitute the primary obligor for all of Vendor's duties and obligations hereunder; and (ii) be liable and responsible as a principal for the performance of all of the duties and obligations of Vendor

hereunder that Vendor may elect to subcontract to any of its Subcontractors or Affiliates, or to any other third party.

25.4 Approved Subcontractors

The Commonwealth's consent, as described in Section 25.1, shall hereby be deemed to be given with respect to the Subcontractors, and their respective associated duties, identified in Schedule 25.4 attached hereto. Vendor has recommended each such Subcontractor to the Commonwealth and represents that each such Subcontractor is a competent, qualified, experienced provider of the particular types of Services identified with respect to such Subcontractor in Schedule 25.4, and that each such Subcontractor is particularly suited to, and fully capable of, fulfilling and satisfying the Commonwealth's requirements for such Services. Vendor shall continuously use all commercially reasonable efforts to ensure that each Subcontractor identified as a Key Subcontractor in Schedule 25.4 is retained and continues to perform the duties, or provide the particular types of Services, that are identified with respect to such Key Subcontractor in Schedule 25.4, throughout the duration of the Term, unless Vendor has obtained the Commonwealth's prior written consent for the replacement or dismissal of such Key Subcontractor.

25.5 Exceptions

Notwithstanding Section 25.1 or anything else to the contrary elsewhere in this Agreement, Vendor may subcontract, without the Commonwealth's advance written consent: (i) for goods and services that are incidental to the performance of the Services and do not involve the anticipated expenditure under this Agreement of more than **[One Million Dollars (\$1,000,000)]** within any one (1) year period; provided that subcontract does not involve direct contact with employees of the Commonwealth or performance of work at Commonwealth facilities; (ii) for additional goods or services with Subcontractors specifically identified in Schedule 25.4 attached hereto, as modified from time to time by mutual written agreement of the Parties, pursuant to Initiatives approved by the Commonwealth; (iii) for building maintenance services for any of the Locations; and (iv) for goods acquired by Vendor that are in conformity with any published specifications of the Commonwealth relating to the configuration of the Commonwealth's approved IT infrastructure or environment. Upon the Commonwealth's written request, Vendor shall provide the Commonwealth with reasonably detailed information regarding any such subcontracting or other acquisition of goods and services by Vendor pursuant to this Section 25.5.

25.6 Subcontractor Agreements

Within thirty (30) days after such agreement is executed, Vendor shall provide the Commonwealth with a true and complete written copy (excluding only relevant pricing information) of any agreement between Vendor and its Subcontractors that relates to performance under this Agreement and with regard to which the cumulative or total value is, or is reasonably expected to be, in excess of **[Two Hundred Fifty Thousand Dollars (\$250,000.00)]**. Vendor covenants that each such agreement or subcontract shall appropriately reflect and conform with all applicable and material terms and conditions of this Agreement.

25.7 Use of SWAMs in Subcontracting

25.7.1. The Commonwealth's Policy

The Commonwealth is committed to equal employment and affirmative action and it is the policy of the Commonwealth, as part of this commitment, that small business concerns, women-owned small business concerns, and minority-owned business concerns (all of the foregoing, collectively, "SWAMs") shall have the maximum practicable opportunity to participate as subcontractors of the various different vendors and suppliers of the Commonwealth. Vendor shall at all time use its good faith efforts to carry out this policy in the award of subcontracts to the fullest extent that is consistent with efficient contract performance.

25.7.2. Vendor SWAM Program

Vendor shall establish and conduct a program that ensures that SWAMs are considered fairly as subcontractors and suppliers under Vendor's contracts with the Commonwealth, including this Agreement. In order to establish and conduct such a program, Vendor shall: (i) assist SWAMs by arranging contracting opportunities, quantities, specifications, and delivery schedules so as to facilitate the participation by such business concerns; (ii) provide adequate and timely consideration of SWAMs in "make-or-buy" decisions; (iii) designate a liaison manager who shall be responsible for interfacing with, and administering subcontracting opportunities for, SWAMs, and who shall be responsible for coordinating and aligning Vendor's SWAM program(s) with the SWAM efforts of the Commonwealth and VITA; (iv) counsel and discuss subcontracting opportunities with representatives of SWAMs; (v) maintain records showing: (a) procedures adopted by Vendor to comply with the policy and procedures set forth in this Agreement, including the establishment of a source list of SWAMs for this Agreement and the Services; (b) awards to SWAMs on the source list; and (c) specific efforts to identify and award contracts to SWAMs; and (vi) cooperate with Commonwealth representatives in any studies and surveys of Vendor's procedures and practices regarding SWAMs that the Commonwealth may conduct periodically with respect to SWAMs providing Services pursuant to this Agreement.

25.7.2.1 Subcontracting Goal

Vendor shall use good faith efforts to obtain from SWAMs a quantity of goods and Services that is at least equal to the percentage of the dollar value of the total annual revenue it receives as Fees under this Agreement or such other SWAM subcontracting goal as set forth in Schedule 25.7.2.1 hereto (collectively, the "SWAM Subcontracting Goal"). As soon as reasonably practicable (and not more than fifteen (15) business days) after the Effective Date, Vendor shall submit to the Commonwealth the following information: (i) the names, addresses of SWAMs that will participate in performance of Vendor's obligations under the Agreement, along with documentation of SWAM certification by the Virginia Department of Minority Business Enterprise (DMBE); (ii) a description of Services or other work that each SWAM shall perform; (iii) the dollar amount of the participation of each SWAM; (iv) a written and signed document of commitment that Vendor will use the SWAMs whose participation it submits in such report to the Commonwealth in order to meet the SWAM

Subcontracting Goal; and (v) a written and signed confirmation from each SWAM that it is participating in providing Services or performing other work as stated in Vendor's written, signed commitment that it provides to the Commonwealth, pursuant to clause (iv), above.

25.7.2.2 Failures to Meet Goal

If Vendor fails to meet the SWAM Subcontracting Goal, evidence of good faith efforts exerted in attempting to meet such goal shall promptly be submitted by Vendor to the Commonwealth. The following actions, when taken by Vendor, are generally considered a sign of good faith effort. This list is not exclusive or exhaustive, but will be used by the Commonwealth, in conjunction with Vendor's compliance with other requirements of this Section 25.7, as a guide in determining compliance with the required good faith effort: (i) efforts to inform SWAMs about this Agreement and Vendor's commitment to meet the SWAM Subcontracting Goal; (ii) advertisement in general circulation, trade association, and minority focus media concerning subcontracting opportunities; (iii) written notice to SWAMs allowing sufficient time for reply; (iv) follow-up of initial solicitation of SWAMs; (v) selection of portions of the work likely to be performed by SWAMs; (vi) provision to interested SWAMs of applicable information for bidding; (vii) negotiation with interested and qualified SWAMs; (viii) assistance to interested SWAMs with information regarding bonding, insurance, or credit; and (ix) use of minority contractors' groups and minority business assistance offices.

25.7.3. Reporting Performance to the Commonwealth

Within thirty (30) days after the Effective Date, Vendor shall provide the Commonwealth with a strategic plan outlining Vendor's methodology regarding the use of SWAMs. Such plan shall include Vendor's proposed implementation of the Commonwealth's supplier diversity in contracting policy and strategy described above. Vendor shall prepare and submit reports detailing Vendor's actual performance regarding supplier diversity in contracting in comparison to such strategic plan within fifteen (15) days after the end of each Contract Quarter. Such reports shall include the total amount of payments (expressed in U.S. dollars) made by the Commonwealth to Vendor for products and services provided under this Agreement, as well as the total amount of payments or value (expressed in U.S. dollars) of subcontracts between Vendor and its SWAMs, during that Contract Quarter. Such reports of Vendor shall be delivered to the Commonwealth in the form described in Schedule 17.1.

25.7.4. Remedies

Vendor's failure to comply with the terms set forth in this Section 25, including Vendor's failure to provide reports to the Commonwealth for each Contract Quarter, or to cooperate in any investigation conducted by the Commonwealth regarding Vendor's compliance with the policies or procedures set forth in this Section 25, shall be deemed to be a material breach of a material term of this Agreement by Vendor.

26. PUBLICITY

Vendor shall in no event issue or publish a press release, article, brochure, or other form of publication, promotional materials, or advertisement that includes statements about this Agreement, the Commonwealth and its agencies, or in any way use any logo, trademark, or other symbol of the Commonwealth and its agencies, without obtaining in advance the Commonwealth's express written consent to the form and substance of such issuance, publication, advertisement, or use. Notwithstanding the foregoing, Vendor shall identify the Commonwealth as a reference for all prospective customers of Vendor interested in obtaining services that are the same or substantially similar to the Services hereunder, unless directed not to do so by the Commonwealth.

27. MISCELLANEOUS

27.1 Entire Agreement

This Agreement, including all Schedules, Exhibits, and other attachments hereto (the terms of each of which are incorporated herein by this reference), constitutes the entire understanding and agreement between the Parties with respect to the transactions contemplated herein and supersedes all other prior or contemporaneous oral or written communications, understandings or discussions with respect to the subject matter of this Agreement. No usage of trade, or other regular practice or method of dealing between the Parties or others, may be used to modify, interpret, supplement, or alter in any manner the express terms of this Agreement.

27.2 Captions; Section Numbers; Terminology

Captions, Tables of Contents, Indices of Definitions, and Section, Schedule, and Exhibit titles and headings are used herein for convenience of reference only and shall not be used in the construction or interpretation of this Agreement. Except as otherwise specifically identified in this Agreement, any reference herein to a particular Section, or a particular Schedule or Exhibit (e.g., Schedule 3.3 (Statements of Work)), shall be deemed a reference to the Section, or the Schedule or Exhibit, or this Agreement that bears the specified number. Further, any reference herein to a particular Section number (e.g., "Section 2"), shall be deemed a reference not only to the referenced Section but also to all subsections thereof (e.g., a reference to "Section 2" refers to Sections 2.1, 2.1.1, 2.2, 2.2.1, 2.2.1.1, etc.).

27.3 Assignment

Except for subcontracting permitted under the terms of Section 25, neither this Agreement, nor any interest herein, nor any of the rights and obligations of Vendor hereunder, may be directly or indirectly assigned, sold, delegated, or otherwise disposed of by Vendor, in whole or in part, without the prior written consent of the Commonwealth. For purposes hereof, an "assignment" subject to the terms and conditions of this Section 27.3 shall be deemed to have occurred in the event of any change in control of Vendor (whether resulting from a single transaction or series of related transactions), restructuring of Vendor, transfer or removal of a material amount of assets from Vendor, or assumption of debt by Vendor that results in Vendor's

net worth being materially less than it was on the Service Commencement Date. The Commonwealth shall be entitled to assign, sell, or dispose of, this Agreement, its interest herein and its rights and obligations hereunder, to any Commonwealth entity. Any assignment made by Vendor in violation of this Section 27.3 shall be null and void and of no force and effect.

27.4 Notices to a Party

Except as expressly otherwise stated herein, all notices, requests, consents, approvals, or other communications provided for, or given under, this Agreement, shall be in writing, and shall be deemed to have been duly given to a Party if delivered personally, or transmitted by facsimile to such Party at its telecopier number set forth below (with the original sent by recognized overnight courier or first class mail to the Party at its address set forth below), or sent by first class mail or overnight courier to such Party at its address set forth below, or at such other telecopier number or address, as the case may be, as shall have been communicated in writing by such Party to the other Party in accordance with this Section. All notices shall be deemed given when received, in the case of personal delivery or delivery by mail or overnight courier, or when sent, in the case of transmission by facsimile with a confirmation, if confirmed by copy sent by overnight courier within one (1) day after sending the facsimile.

Notices to the Commonwealth shall be addressed as follows:

[_____]

Fax:

With a copy on all legal notices, including lawsuits, third party actions and subpoenas to:

Office of the Attorney General
900 E. Main Street
Richmond, Virginia
Attention: John Westrick, Assistant Attorney General

Notices to Vendor shall be addressed as follows:

[_____]

Fax:

With a copy to:

27.5 Amendments

Except as expressly provided herein, this Agreement may not be modified or amended except by written document duly executed by authorized representatives of both of the Parties hereto. No other act, document, usage or custom shall be deemed to amend or modify this Agreement. If either Party desires to amend this Agreement, the requesting Party shall deliver to the other Party's Relationship Manager a written request for an amendment (an "Amendment Request"), specifying the requested amendment with sufficient details to enable the other Party to reasonably evaluate it. Within three (3) business days after the date of receipt of such Amendment Request (unless the scope of the amendment is such that it cannot reasonably be evaluated in three (3) business days through the use of all commercially reasonable efforts, in which case within a reasonable time thereafter), the receiving Party shall provide the requesting Party with a written response as to whether the requesting Party's proposed amendment is acceptable. If, in such response, the receiving Party indicates that the requesting Party's proposed amendment is acceptable, the Parties shall promptly and duly execute a written document evidencing such amendment and this Agreement shall be amended in accordance with the terms of such written document.

27.6 Waiver

No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or excusal is in writing and signed by the Party claimed to have waived or excused. The failure or delay of either Party to exercise any right, power, or privilege hereunder shall not constitute a waiver thereof. A waiver shall be effective only in the specific instance, and for the specific purpose, stated in such writing, and shall not preclude further exercise of the same right, power, or privilege or the exercise of any other right, power, or privilege hereunder. No agreement by either Party to indemnify the other hereunder, nor any exceptions to any such agreement, shall constitute, or be construed as, a waiver of any rights of contribution otherwise available at law or in equity to either Party.

27.7 Relationship Between and Legal Status of Parties

This Agreement shall in no event be construed in such a way that either Party constitutes, or is deemed to be, the representative, agent, employee, partner, or joint venturer of the other Party. Vendor is and shall at all times be an independent contractor with regard to all performance under this Agreement. Neither Party shall have the authority to enter into any agreement, nor to assume any liability, on behalf of the other Party, nor to bind or commit the other Party in any manner, except as expressly provided herein. Vendor's and its Subcontractors' employees who provide Services pursuant to this Agreement, or who at any time are located or provide Services on the Commonwealth's premises, shall remain the respective employees of Vendor or its Subcontractors, as applicable, and Vendor and its Subcontractors shall have sole responsibility for all such employees, including responsibility for payment of all compensation to

them, the provision of employee benefits to them, and responsibility for injury to them in the course of their employment. Vendor and its Subcontractors shall be responsible for all aspects of labor relations with such employees, including their hiring, supervision, evaluation, discipline, firing, wages, benefits, overtime, and job and shift assignments, and all other terms and conditions of their employment, and the Commonwealth shall have no responsibility whatsoever for any of the foregoing.

27.8 Non-Exclusive Remedies

Unless expressly provided otherwise in this Agreement, no remedy set forth in this Agreement shall be exclusive of any other remedy and each such remedy shall be in addition to and not in lieu of every other remedy given hereunder, or now or hereafter existing or available at law, in equity, by statute, or otherwise.

27.9 Severability

If any provision of this Agreement is determined by any court or tribunal of competent jurisdiction to be invalid or unenforceable, that provision shall be deemed severed and stricken from this Agreement and: (i) the remainder of this Agreement shall continue in full force and effect insofar as it remains a workable instrument to accomplish the intent and purposes of the Parties, as evidenced herein; and (ii) the severed provision shall be deemed replaced by the valid, legal, and enforceable provision that comes closest to reflecting the intention of the Parties underlying the severed provision.

27.10 Counterparts

This Agreement may be executed in duplicate counterparts. Each such counterpart, if executed by both Parties, shall be an original and both such counterparts together shall constitute but one and the same document. This Agreement shall not be deemed executed unless and until at least one counterpart bears the signature of each Party's designated signatory.

27.11 Governing Law; Venue

The construction, formation, and interpretation of this Agreement, and the performance of the Parties hereunder, shall be governed and construed in accordance with the laws of the Commonwealth of Virginia, without regard to conflicts of laws provisions thereof. The exclusive venue for all actions or proceedings arising out of, or related to, this Agreement shall be in an appropriate Virginia circuit court located in Richmond, Virginia, and Vendor hereby irrevocably consents to the personal and subject matter jurisdiction of such court and waives any claim that such courts do not constitute a convenient and appropriate venue for such actions or proceedings. Vendor consents to service of process upon itself by means of any of the methods for delivery of notice that are specified in Section 27.4 hereof. The Parties specifically exclude from application to this Agreement the United Nations Convention on Contracts for the International Sale of Goods.

27.12 Governmental Immunity

Notwithstanding anything to the contrary set forth elsewhere in this Agreement, the Commonwealth has not, and in no event shall be construed to have, waived any rights or defenses of governmental immunity that it may have with respect to any matters arising out of this Agreement or performance hereunder.

27.13 No Third-Party Beneficiaries

This Agreement is an agreement by and between the Parties, and neither: (i) confers any rights upon any of the employees, agents, or contractors of either Party, or upon any other Person not a Party hereto; or (ii) precludes any actions or claims against, or rights of recovery from, any Person not a Party hereto.

27.14 Expenses

Each Party shall be solely responsible for all expenses paid or incurred by it in connection with the planning, preparation, negotiation, and consummation of this Agreement.

27.15 Order of Precedence

In the event of conflict in substance or impact between the terms and conditions of Sections 1 through 28 of this Agreement and those of any Schedule, Exhibit, or other attachment hereto, the terms and conditions of such Sections shall control, subject to the right of Vendor and the Commonwealth to mutually amend the Agreement and the Schedules, Exhibits, and other attachments, as set forth herein.

27.16 Further Assurances

Each Party agrees to execute and deliver any and all additional documents and instruments, and take all other actions that may be necessary to give effect to this Agreement and all transactions and activities contemplated hereby.

27.17 Neither Party Considered Drafter

Despite the possibility that one Party may have prepared the initial draft of this Agreement or played the greater role in the physical preparation of subsequent drafts, the Parties agree that neither Party shall be deemed the drafter of this Agreement and that in construing this Agreement, in the event of any claim that any provision hereof may be ambiguous, no provision hereof shall be construed in favor of one Party on the ground that such provision was drafted by the other. In all respects, this Agreement shall be construed as though jointly prepared by the Parties.

28. DEFINITIONS

The following words and phrases, when used in this Agreement, shall have the indicated meanings. (Terms capitalized within a particular definition are defined elsewhere within this Agreement.)

28.1 Acceptance Criteria

“Acceptance Criteria” means the applicable Specifications, warranties and acceptance criteria for the item being tested as set forth or referenced in this Agreement and any Schedules hereto.

28.2 Acceptance Test Procedures

“Acceptance Test Procedures” means, collectively, the acceptance test procedures for the item being tested set forth or referenced in this Agreement or any Schedules hereto, or such other procedures and standards mutually agreed upon by the Parties in writing.

28.3 Additional Resource Charge (ARC)

“Additional Resource Charge” or “ARC” means a specific amount of Fees that, with regard to any particular resource category and time period, is equal to the product of the number of Resource Units by which actual measured resource utilization for such resource category during such time period exceeds the Baseline Volume for such resource category, if and as specified in Schedule 10.1, times the per Resource Unit charge, if and as specified in Schedule 10.1, that is applicable to Resource Units that are actually utilized in such resource category in excess of such Baseline Volume.

28.4 Affected Employees

“Affected Employees” is defined in Schedule 8.1.

28.5 Affiliate

“Affiliate” means, as to entity, any Person that, directly or indirectly, controls, is controlled by, or is under common control with, such entity, whether through ownership of voting securities or otherwise. For this purpose, and without limiting the foregoing, any Person that owns more than fifty percent (50%) of the outstanding voting securities of any other Person shall be deemed to control such other Person.

28.6 Agreement

“Agreement” means this Comprehensive Infrastructure Agreement between the Commonwealth and Vendor, as amended from time to time, including these terms and conditions, and all Exhibits, Schedules, and other attachments hereto.

28.7 Applicable Hourly Rates

“Applicable Hourly Rates” has the meaning given it in Section 6.5.

28.8 Assignment and Assumption Agreement

“Assignment and Assumption Agreement” has the meaning given it in Section 2.3.1.

28.9 Auditors

“Auditors” means, with respect to a Party, the independent third-party auditors designated by such Party in writing from time to time, in its sole discretion. With respect to the Commonwealth, such term shall include the Commonwealth Auditor of Public Accounts, the staff of the Joint Legislative Review and Audit Commission (JLARC), the Commonwealth Department of Accounts, and the Director of VITA Internal Audit Services.

28.10 Baseline Volume

“Baseline Volume” means, the quantity of Resource Units specified in Schedule 10.1 with respect to any particular resource category and time period.

28.11 Benchmarking Firm

“Benchmarking Firm” has the meaning given it in Section 10.8.

28.12 Book Value

“Book Value” has the meaning given it in Section 2.1.3.

28.13 Chargeback System

“Chargeback System” means the Third Party Software and related System, which shall be used to implement VITA’s chargeback process (related to the Services and otherwise) and specifically identified in Schedule 28.123 hereto and meeting the Specifications set forth in Schedule 28.13 hereto.

28.14 The Commonwealth

“The Commonwealth” means the Commonwealth of Virginia.

28.15 The Commonwealth IT Base Case

“The Commonwealth IT Base Case” means the financial summary attached hereto as Schedule 28.15, including the detailed financial and budget information and records of actual and planned IT expenditures underlying such summary.

28.16 Commonwealth Data

“Commonwealth Data” means, in or on any media or form of any kind: (i) data, or summaries or indices of data, related to or describing the Commonwealth or any Eligible Customer, or the residents, constituents, citizens, clients, customers, employees, agents, subcontractors, or other representatives of the same, or related to or describing the Services or the Systems, regardless of whether or not such data, summaries or indices are owned by the Commonwealth or any Eligible Customer, generated or compiled by the Commonwealth or any Eligible Customer, or provided by such residents, constituents, citizens, clients, customers, employees, agents, subcontractors, or representatives, including data that are in the Commonwealth’s or any Eligible Customer’s databases or otherwise in their possession or control on the Effective Date or at any time thereafter; (ii) other Commonwealth or any Eligible Customer records, data, files, input materials, processed data, results of data analyses, information, reports, forms, and other such items and materials that may be created, received, computed, developed, used, or stored by Vendor, or by any of Vendor’s Subcontractors, for or on behalf of the Commonwealth or any Eligible Customer in, or in connection with, the performance of Vendor’s duties under this Agreement, but excluding in any event any internal data and information of Vendor and its Subcontractors (other than service level measurements and contract charges) and any correspondence between the Parties; and (iii) modifications, compilations, and derivative works of the items, data, and other materials described by the foregoing clauses (i) and (ii) as being included within Commonwealth Data.

28.17 Commonwealth Resources

“Commonwealth Resources” has the meaning given it in Section 3.14.1.

28.18 Commonwealth Software

“Commonwealth Software” means Software that is created, developed, or otherwise acquired by the Commonwealth before, on, or after the Effective Date, and all supporting documentation, media, and related materials, and all modifications, enhancements, updates, replacements, and other derivative works of any of the foregoing, including the Software identified in Schedule 28.18, but excluding the Vendor Software and the Third-Party Software.

28.19 Commonwealth Works

“Commonwealth Works” means tangible and intangible information and developments that are owned by the Commonwealth (including Commonwealth Software, to the fullest extent of the Commonwealth’s rights therein), including all intermediate and/or partial versions thereof and all designs, specifications, inventions, discoveries, improvements, materials, program materials, software, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, other creations, and the like, in any form or media.

28.20 Commonwealth Confidential Information

“Commonwealth Confidential Information” means:

(a) technical information, materials, data, reports, programs, documentation, diagrams, ideas, concepts, techniques, processes, inventions, knowledge, know-how, and trade secrets, whether in tangible or intangible form, whether disclosed or conveyed by visits to the Commonwealth’s or any Eligible Customer’s sites or facilities, whether or not marked or otherwise identified as confidential, and whether in any specific form or media, or disclosed orally, that are developed or acquired by such Party, except for Work Product;

(b) information and data relating to the Commonwealth’s or any Eligible Customer’s practices, personnel, customers (and the business practices, habits, needs, trends, and ordering history of such customers), products, services, orders, business, management information services, financials, costs, or margins that is not generally known by others in the same line of business;

(c) information that the Commonwealth or any Eligible Customer identifies to Vendor as confidential by a stamp or other similar notice;

(d) this Agreement, the terms and conditions hereof, and measurements of performance hereunder, except to the extent that Vendor deems it necessary or appropriate, in its sole discretion, to disclose this Agreement, or any such terms, conditions, or performance measurements, to enable, permit, or facilitate: (i) benchmarking, in accordance with this Agreement; and (ii) filings with governmental agencies, including the Securities and Exchange Commission, that Vendor is required or deems it appropriate to make, except that, in the event of any such filing, Vendor shall request confidential treatment of this Agreement and, in particular, the provisions of this Agreement related to Fees and pricing;

(e) information and data relating to the employees and former employees of the Commonwealth or any Eligible Customer, and the salaries, severance packages, and other benefits, and performance assessments or appraisals, of or applicable to such employees or former employees;

(f) other information relating to the Commonwealth or any Eligible Customer that is treated as confidential by the Commonwealth or any Eligible Customer and that a reasonably prudent person would expect not to be made available to third parties without restriction or payment; and

(g) (i) Work Product, Commonwealth Data, and Commonwealth Software; and (ii) records, data, information or materials in the possession or control of the Commonwealth, or created, developed, collected, processed, handled, stored, transmitted, or received, in any form or media, by Vendor or the Systems in connection with this Agreement (including individually identifiable health information), that the Commonwealth is, for any reason, prohibited from publicly disclosing, whether by law, statute, regulation, ordinance, contract, or otherwise.

Confidential Information shall not include specific information that Vendor can demonstrate was: (i) at the time of disclosure to Vendor, available to the public, as evidenced by generally available documents or publications, through no fault of Vendor; (ii) after disclosure to Vendor, published or otherwise made a part of the public domain through no fault of Vendor; (iii) already in the possession of Vendor, without Vendor being under any obligations of confidentiality with respect thereto, at the time of disclosure by the Commonwealth; (iv) received or obtained by Vendor, without Vendor assuming any obligations of confidentiality with respect thereto, from a third party who had a lawful right to disclose such Confidential Information to Vendor; (v) independently developed by Vendor without reference to Commonwealth Confidential Information and not in connection with the performance or receipt of Services; or (vi) required to be disclosed or made publicly available by applicable law, statute, regulation, ordinance, or otherwise, including this Agreement or any portion thereof that the Commonwealth is required to disclose under applicable law, statute, regulation, or ordinance. For purposes hereof, specific information (e.g., that disclosed in connection with engineering and design practices, and related techniques, equipment, products, or operating conditions), shall not be deemed to be within the foregoing exceptions merely because it represents a specific instance or example of general information or disclosures in the public domain or in the possession of Vendor. In addition, no combination of features shall be deemed to be within the foregoing exceptions merely because individual features contained therein are in the public domain or in the possession of Vendor, and such a combination of features shall be deemed to be within the foregoing exceptions only if both the combination itself and its principle of operation are in the public domain or in the possession of Vendor. For purposes of this provision, information is in the public domain if it is generally known (through no fault of Vendor) to third parties who are not subject to nondisclosure restrictions similar to those in this Agreement.

28.21 Confidentiality Agreement

“Confidentiality Agreement” has the meaning given it in Section 19.6.

28.22 Consent

“Consent” whether capitalized or not and unless expressly specified otherwise, means, with regard to either a specified or an applicable Party whose consent is required hereunder, the voluntary, freely-given consent of such Party, which consent may be withheld in such Party’s sole discretion, with no duty to be reasonable in the withholding of such consent.

28.23 Contracts

“Contracts” means those written maintenance agreements, service agreements, and subcontractor agreements under which the Commonwealth receives third-party services relating to the Services, including those that are identified as Contracts in Schedule 28.23.

28.24 Contract Quarter

“Contract Quarter” means each successive three month period beginning on the Signing Date.

28.25 Contract Year

“Contract Year” means any one-year period ending at the end of the day before an anniversary of the Service Commencement Date.

28.26 Credit Rating

“Credit Rating” means the rating category assigned by Moody’s Investors Service, Inc., or its successor, with respect to any short-term obligations issued by the Person to whom such rating category is assigned.

28.27 Critical Milestones

“Critical Milestones” means actions and projects identified as Critical Milestones in Schedule 28.27.

28.28 Cross-Functional Tower

“Cross-Functional Tower” means the cross-functional Services as further described in Appendix 1 to Schedule 3.3.

28.29 Current Projects

“Current Projects” means IT-related projects of the Commonwealth that (i) are in progress as of the Service Commencement Date (whether or not such projects involve third-party services) and (ii) are scheduled to commence during the first Contract Year and are contemplated by the Commonwealth IT Base Case, including all such projects specifically identified in Schedule 28.29.

28.30 Data Network Tower

“Data Network Tower” means the data telecommunications Services as further described in Appendix 8 to Schedule 3.3.

28.31 Day

“Day” whether capitalized or not and unless expressly specified otherwise, means a calendar day.

28.32 Default

“Default” means the occurrence of any one or more of the following:

(a) performance of the Services by Vendor in a manner that meets or satisfies any one or more of the criteria expressly specified in Schedule 3.3 or Schedule 3.12 as constituting a Default, except to the extent excused pursuant to Section 16.4;

(b) the failure of Vendor to meet a Service Level for three (3) consecutive months or four (4) times in any given twelve (12)-month period;

(c) the incurrence of more than [REDACTED] in Performance Credits during any four (4)-month period;

(d) any breach or default by Vendor with respect to any of its representations and warranties under this Agreement;

(e) any failure by Vendor as specified in Section 3.2.2 with respect to the transition Services;

(f) any material breach or default by Vendor of its obligations under this Agreement, provided that such breach or default, if curable, is not cured within fifteen (15) days after the Commonwealth provides Vendor with written notice thereof;

(g) any material breach or default by Vendor with respect to its obligations under this Agreement not capable of cure, which shall be deemed to include its obligations under Section 12 hereof or Section 19 hereof;

(h) numerous or repeated breaches or defaults by Vendor of its obligations under this Agreement which collectively constitute a material breach or default by Vendor of its obligations under this Agreement;

(i) the existence of a material representation by Vendor in this Agreement that Vendor knew or should have known was materially false when made, except that, if such misrepresentation is curable and such cure will fully and completely effect a resolution reasonably acceptable to the Commonwealth, there shall not be a Default if such misrepresentation is cured within ten (10) days after Vendor has been notified by the Commonwealth in writing thereof;

(j) the insolvency of Vendor, a general failure of Vendor to pay its debts in the normal course, the entrance of Vendor into receivership or any arrangement or composition with creditors generally, the filing of a voluntary petition (or an involuntary petition that is not dismissed within sixty (60) days) for bankruptcy or reorganization or dissolution or winding-up of Vendor, a general assignment for the benefit of creditors of Vendor, or a seizure or a sale of a material part of Vendor's property by or for the benefit of any creditor or governmental agency;

(k) an assignment or attempted assignment by Vendor in violation of Section 27.3 hereof;

For purposes of this Section 28.32, the word "cure" shall include implementation by the applicable Party of a reasonable work-around or similar temporary measures, provided that such measures do not cause the other Party to incur significant expense, or expend significant time or resources, and that the defaulting Party continually pursues and promptly implements a full and complete cure until such time as such cure is so effected.

28.33 Deliverable

“Deliverable” means tangible and intangible information or material that must be provided by Vendor to the Commonwealth under the terms of this Agreement. Deliverables shall constitute Work Product, Vendor Works or Third Party Works.

28.34 Desktop Computing Tower

“Desktop Computing Tower” means the desktop Services as further described in Appendix 5 to Schedule 3.3.

28.35 Disabling Device

“Disabling Device” has the meaning given it in Section 3.15.

28.36 Disagreement

“Disagreement” means a dispute, controversy, or claim of any nature arising under or in connection with this Agreement, including any that results from any of the following:

- (a) an alleged failure by either Party to perform its obligations under this Agreement;
- (b) an alleged inadequacy or delay of either Party’s performance under this Agreement;
- (c) a request for products, services, or resources where the Parties disagree whether such products, services, or resources are within the scope of this Agreement;
- (d) a disagreement as to the responsibilities either Party has under this Agreement; or
- (e) a disagreement as to the creation, validity, interpretation, breach, or termination of this Agreement.

28.37 Disagreement Report

“Disagreement Report” means a written report executed by both Parties describing a solution to a Disagreement.

28.38 Disaster Recovery Plan

“Disaster Recovery Plan” means the disaster recovery plan attached hereto as Schedule 3.9, as revised and amended from time to time, in accordance with Section 3.9.

28.39 Disentanglement

“Disentanglement” has the meaning given it in Section 15.1.

28.40 Disentanglement Commencement Date

“Disentanglement Commencement Date” has the meaning given it in Section 15.2.

28.41 Disentanglement Transition Plan

“Disentanglement Transition Plan” has the meaning given it in Section 15.1.

28.42 Documentation

“Documentation” means, with respect to any particular Items: (i) all of the written, printed, electronic, or otherwise formatted materials that relate to such Items, or any component thereof; (ii) all user, operator, system administration, technical, training, support, and other manuals and all other written, printed, electronic, or other format materials that represent, demonstrate, explain or describe the functional, operational or performance capabilities of such Items; and (iii) all specifications, materials, flow charts, notes, outlines, manuscripts, writings, pictorial or graphical materials, schematics, and other documents that represent, demonstrate, explain or describe such Items.

28.43 Effective Date

“Effective Date” has the meaning given it in Section 1.4.

28.44 Eligible Customer

“Eligible Customer” means, collectively, and to the extent such entity or person is receiving Services under this Agreement, the following: (i) VITA; (ii) any current or future executive body, agency, office, department, authority, post, commission, committee, institution, board or other political subdivision of the Commonwealth; (iii) any current or future non-executive body, agency, office, department, authority, post, commission, committee, institution, board or other political subdivision of the Commonwealth; (iv) any current or future city, town, locality or local government of the Commonwealth; (v) any entity or person engaged in the provision of products or services to any of the Eligible Customers identified in clauses (i) through (iv) of this definition, but only in connection with the provision of such products or services to the Eligible Customers; (vi) any entity to which an Eligible Customer outsources any of its existing functions to the extent necessary for such entity to continue performing such function for the Eligible Customer, or any other customer of such Eligible Customer, but only in connection with the provision of such outsourced functions and provided such entity agrees in writing to be bound by the terms and conditions of this Agreement; and (vii) other entities to which the Parties agree. Without limiting the foregoing, the Eligible Customers intended to receive the benefit of the Services as of the Effective Date are identified on Schedule 28.44.

28.45 End-User

“End-User” means a Person upon whom an Eligible Customer intends, in its sole discretion, to confer the right to access and use the Systems or receive the benefit of the performance of the Services or the provision of the Deliverable, whether an employee, client, customer, resident, constituent or citizen of the Commonwealth, VITA, or any Eligible Customer, or any other Person.

28.46 Environmental Laws

“Environmental Laws” means applicable federal, state, or local statutes, laws, regulations, rules, ordinances, codes, licenses, orders, or permits of any governmental entity relating to environmental matters including: (i) the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.), the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), the Endangered Species Act (16 U.S.C. §§ 1531 et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. §§ 110011 et seq.); and (ii) all state and local provisions similar in substance or intent to the federal laws described in the foregoing clause (i).

28.47 Estimated Purchase Price

“Estimated Purchase Price” has the meaning given it in Section 2.1.2.

28.48 Exit Fee

“Exit Fee” means the early termination fee specified in Schedule 10.1, less: (a) any severance fees saved by Vendor as a result of the Commonwealth’s hiring of Vendor Personnel in connection with such termination; and (b) other amounts payable by the Commonwealth to Vendor that have the effect of reducing Vendor’s costs upon such termination, excluding costs associated with Services that are the subject of prior partial terminations effected pursuant to Section 14.2, as well as Fees paid for Disentanglement efforts pursuant to Section 15.1 and payments by the Commonwealth to Vendor for the purchase of resources upon Disentanglement (other than payments in respect of Essential Agreements pursuant to Section 15.3.3).

28.49 Expiration Date

“Expiration Date” has the meaning given it in Section 14.1.1.

28.50 Fees

“Fees” means the fees payable by the Commonwealth to Vendor hereunder in consideration of Vendor’s performance of the Services, as described in Section 10 and specified in, and calculated pursuant to, Schedule 10.1.

28.51 Final Purchase Price

“Final Purchase Price” has the meaning given it in Section 2.1.4.

28.52 Force Majeure Event

“Force Majeure Event” means a cause beyond the reasonable control of a Party that materially and substantially prevents or delays such Party’s performance hereunder (or that materially and substantially affects such Party’s need for, ability to effectively utilize, or ability to provide, Services hereunder), including acts of God, act of governmental body or military authority, fire, explosion, power failure, flood, epidemic, riot or civil disturbance, war, sabotage, accidents, civil insurrections, blockades, embargoes, storms, labor disputes (except those involving personnel of Vendor, its Affiliates or its Subcontractors), earthquakes, elements of nature, terrorism, rebellions or revolutions in the United States, or other similar events, except that “Force Majeure Event” expressly excludes the following with respect to Vendor: (i) any event that Vendor could reasonably have prevented by testing, reasonable work-around, other exercise of diligence or the use of technology common and prevalent in the industry; (ii) any failure of any systems, facilities, or hardware that could have been prevented by a reasonable amount of testing; and (iii) any insufficiency of funds of Vendor.

28.53 Go Live Date

“Go Live Date” has the meaning given it in Section 7.2.

28.54 Government Approvals

“Government Approvals” means permits, waivers, approvals or consents that are required, under applicable laws and regulations, in connection with the consummation of a particular agreement, event or transaction.

28.55 Hazardous Material

“Hazardous Material” means a substance, the presence of which requires investigation or remediation under an Environmental Law, or that is or becomes defined as a “hazardous waste,” “hazardous substance,” pollutant, or contaminant under an Environmental Law.

28.56 Help Desk Tower

“Help Desk Tower” means the help desk Services as further described in Appendix 4 to Schedule 3.3.

28.57 IT

“IT” means information technology.

28.58 Including

“Including,” whether capitalized or not, means “including, but not limited to.”

28.59 Indemnitees or Commonwealth Indemnitees

“Indemnitees” or “Commonwealth Indemnitees” means, with respect to the Commonwealth, the Commonwealth, VITA and the Eligible Customers, and the officers, directors, elected and appointed officials, employees, agents, successors, and assigns of each of the foregoing.

28.60 Infringement Claim

“Infringement Claim” has the meaning given it in Section 22.1.1.

28.61 Initiative

“Initiative” means a significant IT-related project, or other services, that is outside the scope of the Services when proposed in accordance with Section 11.1, and that the Parties agree in accordance with Section 11.1 is to be performed by Vendor for the Commonwealth. For avoidance of doubt, none of the following shall be deemed an Initiative when proposed, but instead are included within the scope of the Services: (i) services that are not materially different than the Services; (ii) services that do not require a material increase in the level of effort or resources necessary to perform the Services; and (iii) changes in the volume or demand for the Services.

28.62 In-Scope Work Request

“In-Scope Work Request” means a request by the Commonwealth for the performance of work that is not being performed by Vendor at the time such request is made but that is within the scope of the Services.

28.63 Intellectual Property Rights

“Intellectual Property Rights” means intellectual or industrial property rights, and moral rights or similar or analogous proprietary rights, pertaining to a particular invention, work of authorship, symbol or other mark or designation indicative of source or quality, or other particular item of tangible or intangible property, arising under statutory or common law or by contract, in the United States or another country that recognizes such rights, whether or not perfected, now existing or hereafter filed, issued, or acquired, including: (i) patent rights associated with an invention and processes (including business processes), methods and apparatus entailed by such invention (including, as applicable, the rights to make, use, sell, offer to sell, import into the United States, or have made, and the rights to file and prosecute patent applications and provisional patent applications); (ii) rights associated with works of authorship, including copyrights and mask work rights (including the rights to copy, adapt, distribute, display, perform, and create derivative works); (iii) rights relating to the protection of trade

secrets and confidential information (including the rights to use and disclose); (iv) trademarks, service marks, trade dress, trade names, and design patent rights (including the right to goodwill appertaining thereto); (v) moral rights; and (vi) other rights analogous, similar, or comparable to those described by the foregoing clauses (i) through (v), and other proprietary rights relating to intangible property (including licensing rights and shop rights).

28.64 Interest

“Interest” means interest accruing at the daily equivalent of an annual rate equal to the lesser of: (i) [] percent ([]%); and (ii) the maximum amount permissible by the applicable law.

28.65 Internal Applications Tower

“Internal Applications Tower” means the VITA-related application Services as further described in Appendix 2 to Schedule 3.3.

28.66 Item

“Item” means any Service, System, Deliverable, Work Product, Underlying Work, or Residual.

28.67 Key Personnel

“Key Personnel” means those Vendor Personnel who are identified in Schedule 8.2 attached hereto, or the holders of the positions that are identified in such Schedule, and such other Vendor Personnel that the Commonwealth may identify as Key Personnel, from time to time, in a written notice or notices delivered to Vendor.

28.68 Key Subcontractor

“Key Subcontractor” means any Subcontractor identified in Schedule 25.4 attached hereto as a Key Subcontractor, and such other Subcontractors as the Commonwealth may identify as Key Subcontractors, from time to time, in a written notice or notices delivered to Vendor.

28.69 Leases

“Leases” means those real property leases or equipment leases which will be used by Vendor to perform the Services as of the Service Commencement Date, including those leases that are identified in Schedule 28.69 and such others as may be identified by the Commonwealth in a written notice or notices delivered to Vendor.

28.70 Licenses

“Licenses” means those written contractual arrangements under which the Commonwealth receives from third parties the right to use software related to the Services,

including those written contractual arrangements that are identified as Licenses in Schedule 28.70 and such others as may be identified by the Commonwealth in a written notice or notices delivered to Vendor.

28.71 Live Testing

“Live Testing” has the meaning given it in Section 7.2.

28.72 Location

“Location” means any location at which the Commonwealth operates, during the period from the Effective Date until the Service Commencement Date, a data center or performs any IT-related services or functions, and any other location at which Vendor at any time during the Term of this Agreement operates a data center or performs any IT-related services or functions for or on behalf of the Commonwealth. The Locations as of the Effective Date are identified in Schedule 28.72 hereto.

28.73 Losses

“Losses” means: (i) amounts actually paid to third parties by the applicable Indemnitees (including judgments, settlements, awards, liabilities, losses, damages, and civil penalties); (ii) reasonable attorneys’ fees incurred by the applicable Indemnitees, in the case of litigation or arbitration; and (iii) out-of-pocket expenses reasonably incurred by the applicable Indemnitees in connection with the investigation or defense of such claims or demands.

28.74 Machines

“Machines” means computers and related equipment, including central processing units and other processors, controllers, modems, communications or telecommunications equipment, cables, storage devices, printers, terminals, other peripherals and input and output devices, and other tangible mechanical and electronic equipment intended for the processing, input, output, storage, transmission, and retrieval of information and data or voice communications.

28.75 Mainframe & Server Tower

“Mainframe & Server Tower” means the mainframe and server Services as further described in Appendix 7 to Schedule 3.3.

28.76 Managed Employees

“Managed Employees” means every Affected Employee who does not accept an offer of employment from the Vendor (or Vendor’s Affiliates or Subcontractors) pursuant to this Agreement, remains employed by the Commonwealth and is made available to Vendor by the Commonwealth for performance of the Services.

28.77 Messaging Tower

“Messaging Tower” means the messaging Services as further described in Appendix 6 to Schedule 3.3.

28.78 New Vendor Employee

“New Vendor Employee” is defined in Schedule 8.1.

28.79 Notice to Proceed

“Notice to Proceed” has the meaning given it in Section 6.5.

28.80 Out-of-Scope Work Request

“Out-of-Scope Work Request” has the meaning given it in Section 6.5.

28.81 Paradigm Technology Shift

“Paradigm Technology Shift” has the meaning given it in Section 10.15.

28.82 Party

“Party” means the Commonwealth or Vendor; “Parties” means both the Commonwealth and Vendor.

28.83 Person

“Person” means any natural person, corporation, limited liability company, limited liability partnership, general partnership, limited partnership, trustee of a trust or estate, association, governmental body or organization or agency, or other legal person or legally constituted entity of any kind.

28.84 Performance Credit

“Performance Credit” means a monetary credit to which the Commonwealth is entitled, as specified in this Agreement, as a result of a particular failure or deficiency in Vendor’s performance, including, for example: (i) Services being performed at levels that do not meet or exceed the applicable Service Levels; and (ii) Critical Milestones not being met or achieved by their respective required dates.

28.85 Post-live Acceptance

“Post-live Acceptance” has the meaning given it in Section 7.2.

28.86 Pre-live Acceptance

“Pre-live Acceptance” has the meaning given it in Section 7.1.

28.87 Pre-live Testing Period

“Pre-live Testing Period” has the meaning given it in Section 7.1.

28.88 Procedures Manual

“Procedures Manual” means the written document setting forth the operational policies, practices and procedures to be followed the parties in connection with performance of the Services, as further described in Section 3.8.

28.89 Proposals

“Proposals” has the meaning given it in Section 1.2.

28.90 Provided Resources

“Provided Resources” has the meaning given it in Section 3.14.1.

28.91 Purchased Assets

“Purchased Assets” means those Machines, equipment, and other tangible personal property that are located within the Locations as of the Service Commencement Date, and that are owned and used by the Commonwealth to provide, prior to the Service Commencement Date, the services that are, or are to be, encompassed within the Services to be provided by Vendor under this Agreement as of the Service Commencement Date, even if such use is not the Commonwealth’s sole use of such assets at such time, and that are to be purchased by Vendor from the Commonwealth, as described, and in accordance with the procedure set forth, in Section 2.1, including those identified in Schedule 28.91. The Retained Assets are expressly excluded from the Purchased Assets.

28.92 Reduced Resource Credit (RRC)

“Reduced Resource Credit” or “RRC” means a specific amount of credit that, with regard to any particular resource category and time period, is equal to the product of the number of Resource Units by which actual measured resource utilization for such resource category during such time period is less than the Baseline Volume for such resource category, if and as specified in Schedule 10.1, times the per Resource Unit credit, if and as specified in Schedule 10.1, that is applicable in the event that the number of Resource Units actually utilized in such resource category is less than such Baseline Volume.

28.93 Relationship Manager

“Relationship Manager” means, with respect to a Party, the individual who is designated its Relationship Manager in Schedule 8.2 hereto, and any subsequent holder of that position designated by such Party and, to the extent required by the terms and conditions of Section 8.1, approved by the other Party.

28.94 Required Consents

“Required Consents” means Government Approvals and other third-party consents or approvals required in connection with: (i) the sale or assignment to Vendor of the Contracts, Leases, and Licenses; (ii) the right of the Commonwealth to use the software that is assigned to Vendor; (iii) the assignment or transfer to the Commonwealth of the rights set forth in Section 12 related to Vendor Works, Third Party Works, Deliverables and Work Product; (iv) the license grants set forth in Section 12 related to Commonwealth Works, Third Party Works and the Chargeback System; and (v) the re-sale or re-assignment to the Commonwealth of the Contracts, Leases, and Licenses in connection with Disentanglement.

28.95 Residuals

“Residuals” means a Party’s general knowledge, skills, and experience, and ideas, concepts, know-how, and techniques, whether developed by it before or during the Term or otherwise obtained by it in connection with performing or receiving the Services, that are related to such Party’s business or business practices and are used by it in the course of providing or receiving the Services, or in using, operating, supporting, or maintaining the Systems, that are not protected, or capable of or susceptible to protection, under any domestic or foreign laws regarding Intellectual Property Rights and that are retained in the unaided memories of such Party’s personnel in connection with the performance or receipt of the Services, or in using, operating, supporting, or maintaining the Systems, except that Residuals shall in no event include any: (i) information intentionally memorized for the purpose of permitting its subsequent use or disclosure; (ii) Confidential Information of, or related to or describing, the other Party or its Affiliates (or in the case of the Commonwealth, VITA and the Eligible Customers), or the personnel or business of any of the foregoing; (iii) invention (and the processes (including business processes), methods and apparatus entailed by such invention); (iv) specific expression, implementation or embodiment of any work of authorship; (v) symbol or other mark or designation of the other Party or its Affiliates (or in the case of the Commonwealth, VITA and the Eligible Customers) that is indicative of source or quality; (vi) trade secrets of the other Party or its Affiliates (or in the case of the Commonwealth, VITA and the Eligible Customers); (vii) Intellectual Property Rights pertaining to any of the other Party’s Work Product; or (viii) other proprietary material of such other Party.

28.96 Resource Unit (RU)

“Resource Unit” or “RU” means, with regard to a particular resource category, the level of resource utilization specified in Schedule 10.1 as constituting the relative unit of measurement used to determine the Commonwealth’s actual utilization of such resource in

comparison to the Baseline Volume, for purposes of calculating ARCs and RRCs, as described herein and in Schedule 10.1.

28.97 Response Period

“Response Period” has the meaning given it in Section 6.5.

28.98 Retained Assets

“Retained Assets” means those Machines, equipment, and other tangible personal property (excluding computer programs) that: (i) are owned by the Commonwealth but not used by it to provide services that are encompassed within the Services to be provided by Vendor under this Agreement; and (ii) are not part of, and are not to be purchased by Vendor as part of, the Purchased Assets, in accordance with the procedure set forth in Section 2.1.

28.99 Retained Licenses

“Retained Licenses” means Licenses that are to be retained by the Commonwealth and are identified as Retained Licenses in Schedule 28.70.

28.100 Retained Personnel

“Retained Personnel” means those Commonwealth personnel who are identified as Retained Personnel by the Commonwealth in a written notice or notices delivered to Vendor within thirty-six (36) months after the Service Commencement Date, and replacements or successors to the positions held by such Commonwealth personnel as are identified as Retained Personnel on such notice or notices.

28.101 Root Cause Analysis

“Root Cause Analysis” has the meaning given it in Appendix 10 to Schedule 3.3.

28.102 Savings

“Savings” has the meaning given it in Section 10.14.

28.103 Security Policies

“Security Policies” has the meaning given it in Section 13.1.

28.104 Security Tower

“Security Tower” means the security Services as further described in Appendix 3 to Schedule 3.3.

28.105 Service Commencement Date

“Service Commencement Date” means 12:01 a.m., U.S. [REDACTED] Standard/Daylight] Time, on [REDACTED], 20[REDACTED].

28.106 Service Levels

“Service Level” means the minimum acceptable level of service or performance for a particular task, activity, or Service performed by Vendor hereunder, as specified in the Appendices to Schedule 3.3.

28.107 Services

“Services” has the meaning given it in Section 3.1.

28.108 Shared Resources

“Shared Resources” has the meaning given it in Section 2.5.

28.109 Signing Date

“Signing Date” has the meaning given it in Section 1.4.

28.110 Software

“Software” means computer programs and program objects of any kind (including object code and source code, and any intermediate forms or versions thereof), program set-up and customization parameters and data, and the tangible media on which any of the foregoing are recorded.

28.111 Software Component

“Software Component” has the meaning given it in Section 7.1.

28.112 Specifications

“Specifications” means the descriptions of Items (except for Residuals) provided hereunder, and the respective components, capacities, functions, and methods of such Items, as set forth in this Agreement, and all Documentation pertaining to such Items, or as otherwise provided to the Commonwealth by Vendor in writing.

28.113 Statement of Work

“Statement of Work” has the meaning given it in Section 3.3.

28.114 Status Report

“Status Report” has the meaning given it in Section 6.1.

28.115 Steering Committee

“Steering Committee” has the meaning given it in Schedule 6.3.

28.116 Subcontractor

“Subcontractor” means any Person (including any Vendor Affiliate) other than Vendor that provides Services, directly or indirectly, to the Commonwealth in connection with this Agreement pursuant to an agreement such Person has with Vendor.

28.117 Suspension

“Suspension” has the meaning given it in Section 14.9.

28.118 Systems

“Systems” means the IT functions, capabilities, operations, and systems that, at any particular time prior to the Service Commencement Date, are used, operated, supported, or maintained by the Commonwealth, or that, at any particular time during the Term on or after the Service Commencement Date, are used, operated, supported, or maintained by Vendor on behalf of, or for the benefit of, the Commonwealth in Vendor’s performance of the Services hereunder, including such IT systems as are described in this Agreement, including as components thereof: (i) the Vendor Software; (ii) the Third-Party Software; (iii) Commonwealth Software; (iv) the Work Product; and (v) the entire system of hardware, Software, equipment, networks, and network components that constitute, are associated with or related to, or interconnect, any of the items described by the foregoing clauses (i) through (iv), or on which such items are installed, operated, or used, at any of the Locations, including any such hardware and Software produced by third parties that is embedded within such Vendor Software, Third-Party Software or the Work Product, and revisions, updates, modifications, and customizations to any or all of the hardware, Software, equipment, networks, and network components described by such clauses, in accordance with this Agreement.

28.119 Technology Refresh Plan

“Technology Refresh Plan” means the plan to be followed by Vendor in periodically replacing or refreshing the technology used to perform the Services or provide the Deliverables, or otherwise used by Vendor and its Subcontractors in connection with the Systems, as set forth in Schedule 3.11 attached hereto and as further described in Section 3.11.

28.120 Term

“Term” means the period during which Vendor shall be obligated to provide the Services, as specified in Section 14.2.

28.121 Termination Date

“Termination Date” has the meaning given it in Section 14.2.

28.122 Termination Notice

“Termination Notice” has the meaning given it in Section 14.2.

28.123 Third-Party Software

“Third-Party Software” means the Software provided to the Commonwealth by Vendor through its Subcontractors (all updates, enhancements, customizations, and other improvements thereof), as specifically identified in Schedule 28.123 hereto.

28.124 Third-Party Works

“Third-Party Works” means Underlying Works conceived, invented, created, or acquired by a third party, rather than by Vendor (including Third Party Software).

28.125 Tower

“Tower” means as applicable, the Cross-Functional Tower, the Internal Applications Tower, the Security Tower, the Help Desk Tower, the Desktop Computing Tower, the Messaging Tower, the Mainframe & Server Tower, the Data Network Tower and/or the Voice and Video Telecom Tower.

28.126 Transition Plan

“Transition Plan” means the project plan for the transition of the Services to Vendor that is described in Section 3.2.3 and a copy of which is attached hereto as Schedule 3.2.

28.127 Underlying Works

“Underlying Works” means tangible and intangible information and material that: (i) had already been conceived, invented, created, developed or acquired by Vendor or third parties prior to the Effective Date and were not conceived, invented, created, developed or acquired for the Commonwealth’s use or benefit in connection with this Agreement; or (ii) were conceived, invented, created, developed or acquired by Vendor or third parties after the Effective Date, but only to the extent such information and material do not constitute Work Product hereunder. An Underlying Work includes all intermediate and partial versions thereof, including all source code and object code with respect thereto, and all designs, specifications, inventions, discoveries, improvements, materials, program materials, software, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, other creations, and the like, whether or not patented or patentable or otherwise protectable by law.

28.128 Unexpected Agreements

“Unexpected Agreements” has the meaning given it in Section 2.6.

28.129 Vendor

“Vendor” has the meaning given it in the preamble to this Agreement.

28.130 Vendor Competitor

“Vendor Competitor” means a Person identified as a Vendor Competitor on Schedule 28.130 attached hereto, and any other Persons that may be designated by Vendor from time to time, in a written notice to the Commonwealth, subject to the Commonwealth’s approval, as additional Vendor Competitors and that are engaged, as a substantial and not incidental part of their respective businesses, in providing products to, or performing activities, functions, or services for, their respective customers that are competitive, on greater than an incidental basis, with the products provided, or activities, functions, or services performed, by Vendor for Vendor’s customers (including the Commonwealth), regardless of the locations from which any such products are provided or received, or any such activities, functions, or services performed or utilized.

28.131 Vendor Personnel

“Vendor Personnel” means, at a given time during the Term, Vendor’s Relationship Manager, the Key Personnel, and all other employees of Vendor or of Subcontractors of Vendor who are then assigned or performing responsibilities in connection with providing the Services. An individual falling within such description is a “Vendor Person.” A complete list of Vendor Personnel, including the specific position occupied or function performed by each Vendor Person, shall be promptly provided by Vendor at any time, and from time to time, during the Term, upon the reasonable written request of the Commonwealth.

28.132 Vendor Software

“Vendor Software” means the Software licensed by the Commonwealth from Vendor, including the Software that is specifically identified in Schedule 28.132 hereto (including all updates, enhancements, customizations, and other improvements thereof).

28.133 Vendor Works

“Vendor Works” means Underlying Works conceived, invented, created, or acquired by Vendor, rather than by a third party (including Vendor Software).

28.134 VITA

“VITA” means the Virginia Information Technologies Agency, or any replacement or successor agency or governmental entity designated by the Commonwealth.

28.135 Voice and Video Telecom Tower

“Voice and Video Telecom Tower” means the voice and video telecommunications Services as further described in Appendix 9 to Schedule 3.3.

28.136 WARN Act

“WARN Act” means the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101 et seq, and any state or local statute, code, regulation or ordinance that is analogous or similar to the WARN Act.

28.137 WARN Notice

“WARN Notice” means a notice required by the WARN Act, or other applicable law, to be provided to a Party’s employees in connection with an event or circumstance that is likely to result in the termination or redeployment of such employees and that might result in the imposition of incremental severance and other costs, damages, fines, or penalties if such laws are not fully complied with.

28.138 Work Product

“Work Product” means information and developments, and intermediate or partial versions thereof, including source code and object code with respect thereto, processes, methods, apparatus, programs and materials related to processing, handling, tracking, enabling or fulfilling the Commonwealth’s receipt or the Services, or access to and use of the Systems, and related policies and procedures, and designs, specifications, inventions, discoveries, improvements, ideas, know-how, techniques, materials, program materials, Software, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, other creations, and the like, whether or not patented or patentable, subject to copyright, constituting a trade secret, or otherwise protectable by law, that are created, invented, or conceived by Vendor in its performance under this Agreement, or by any Person engaged by Vendor in the performance of Vendor’s obligations or the exercise of Vendor’s rights under this Agreement, and the Intellectual Property Rights in or pertaining to any of the foregoing. All Work Product constitutes a Deliverable. Each of the Parties acknowledges that, to the extent that Work Product contains Confidential Information of another Party, such Work Product shall be subject to the provisions of Section 19 of this Agreement.

[SIGNATURE PAGE FOLLOWS]

The Parties have executed this Agreement as of the Effective Date set forth above.

THE COMMONWEALTH OF VIRGINIA	[NAME OF VENDOR]
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____