



Commonwealth of Virginia
Virginia Information Technologies Agency

MICROSOFT MASTER SERVICES AGREEMENT STATE & LOCAL (NON-STANDARD)

Optional Use Contract

Date: March 21, 2016

Contract #: VA-160304-MCS

Authorized User: All public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 of the *Code of Virginia*

Contractor: Microsoft Corporation
8050 Microsoft Way.
Ap2/1610
Charlotte, NC 28273

FIN: 91-1144442

Contact Person: Beth Dehaven
Phone: 804-337-3262
Email: bdehaven@microsoft.com

Term: March 4, 2016 – March 4, 2021

Payment: Net 30 days

For Additional Contract Information, Please Contact:
Virginia Information Technologies Agency
Supply Chain Management

Greg Searce
Strategic Sourcing Specialist
Phone: 804-416-6166
E-Mail: gregory.searce@vita.virginia.gov
Fax: 804-416-6361

NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this Contract.

For updates, please visit our Website at <http://www.vita.virginia.gov/procurement/contracts.cfm>

VIRGINIA INFORMATION TECHNOLOGIES AGENCY (VITA): Prior review and approval by VITA for purchases in excess of \$100,000.00 is required for State Agencies and Institutions only.

Microsoft Master Services Agreement – State and Local (Non-Standard)

Microsoft Master Services Agreement Number
 Microsoft affiliate to complete

This Microsoft Master Services Agreement is entered into between the following entities as of the effective date identified below. This agreement is comprised of this cover page and the attached terms and conditions, the terms of which are incorporated herein by this reference.

This agreement contains terms of the relationship between you and us. If you contract for services from us under this agreement, the specific terms of those transactions will be contained in this agreement and any statement of services incorporating this agreement.

If the first statement of services entered into under this agreement is given an effective date that is earlier than the effective date of this agreement, the effective date of this agreement will be that earlier date for the purposes of that statement of services.

By signing below, each party acknowledges that it has read and understood the terms of this agreement and agrees to be bound by these terms.

Customer	Microsoft Affiliate	
Name of Customer (please print) Virginia Information Technologies Agency (VITA)	Name Microsoft Corporation	
Signature 	Signature	C5F4FFFE6A2E45D David T. Gallagher
Name of person signing (please print) Philip Prager	Name of person signing (please print) David T. Gallagher	
Title of person signing (please print) Director, VITA Supply Contract Mgmt	Title of person signing (please print) Director of Contracts	
Signature date 3/4/16	Signature date (may be different than Effective Date) 3/7/2016	
	Effective Date (may be different than Signature Date) 3/7/2016	

Contact information. Each party will notify the other in writing if any of the information in the following table changes. The * indicates required fields. By providing contact information, you consent to its use for purposes of administering this agreement by us, our affiliates, and other parties that help us administer this agreement.

Customer		
Name of Customer		Contact Name * (This person receives notices under this agreement pursuant to Section 12 (Notices)).
Virginia Information Technologies Agency		Gregory Searce
Street Address		Contact Email Address *
11751 Meadowville Lane		Gregory.searce@vita.virginia.gov
City	State/Province	Phone
Chester	Virginia	(804) 416-6166
Country	Postal Code	Fax
USA		(804) 416-6361
Microsoft		
Notices to Microsoft should be sent to (Microsoft affiliate to complete):		Copies should be sent to:
<ul style="list-style-type: none"> • Kevin Hartley Senior Attorney Microsoft Corporation 5335 Wisconsin Ave., NW Suite 800 Washington, DC 20015 		Microsoft Law and Corporate Affairs One Microsoft Way Redmond, WA 98052 USA Services Attorney (425) 936-7329 fax

Terms and Conditions

1. Definitions. In this agreement, a "party" or "parties" means you and/or us as the context requires. "You" means the entity that has entered into this agreement and may also refer, as the context requires, to your affiliates who enter into a statement of services under this agreement. "We", "us", or "our" means, the Microsoft entity that has entered into this agreement and may also refer, as the context requires, to our affiliates. In addition, the following definitions apply:

"**affiliate**" means (i) with regard to you, any government agency, department, office, instrumentality, division, unit or other entity of your state or local government that is supervised by or is part of you, or which supervises you or of which you are a part, or which is under common supervision with you **which is defined as a public body in 2.2-4301 of the Code of Virginia** together with, as mandated by law, any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality located within your state's jurisdiction and geographic boundaries; provided that a state and its affiliates shall not, for purposes of this definition, be considered to be affiliates of the federal government and its affiliates; and (ii) with regard to us, any legal entity that we own, which owns us, or which is under common ownership with us. **"Affiliate" also includes the term "Authorized User" which, means all public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 and §2.2-2012 of the Code of Virginia. Authorized Users shall include private institutions of higher education that are listed at: <http://www.civv.org/Our-Colleges/Profiles.aspx>."**

"**contractor(s)**" means any third party supplier or other provider of computer technology or related services;

"**developments**" means any computer code or materials (other than products, fixes or pre-existing work) developed by us or in collaboration with you which is provided to you in the course of performance of a statement of services;

"**fixes**" means product fixes, modifications or enhancements or their derivatives that we either release generally, (such as commercial product service packs) or that we provide to you when performing services (such as workarounds, patches, bug fixes, beta fixes and beta builds);

"**joint ownership**" means each party **to a statement of services** has the right to independently exercise any and all rights of ownership now known or here after created or recognized, including without limitation the rights to use, reproduce, modify and distribute the developments for any purpose, without the need for further authorization to exercise any such rights or any obligation of accounting or payment of royalties;

"**open source license terms**" means license terms that require computer code to be generally (i) disclosed in source code form to third parties; (ii) licensed to third parties for the purpose of making derivative works; or (iii) redistributable to third parties at no charge;

"**Ownership**" means more than 50% ownership.

"Personal Information ("PI"), Personally Identifiable Information ("PII")" means all information that describes, locates or indexes anything about an individual including his real or personal property holdings derived from tax returns, and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, or that affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual; and the record of his presence, registration, or membership in an organization or activity, or admission to an institution. "Personal Information" shall not include routine information maintained for the purpose of internal office administration whose use could not be such as to affect adversely any data subject nor does the term include real estate assessment information. Code of Virginia § 2.2-3801;

"**pre-existing work**" means computer code or materials (other than products and fixes) developed or otherwise obtained independently of the efforts of a party under a statement of services;

"product" means any computer code, web-based services, or materials comprising commercially released, pre-release or beta products (whether licensed for a fee or no charge) and any derivatives of the foregoing we make available to you for license which is published by us, our affiliates, or a third party;

"service deliverables" means any computer code or materials, other than products or fixes, that we leave with you at the conclusion of our performance of services **or are which are specified in the statement of services as deliverables;**

"services" means all support, consulting and other services or advice, including any resulting deliverables provided to you under the terms and conditions of this agreement;

"statement of services" means any work orders, services descriptions, or other statement of services referencing this agreement.

2. Services. The precise scope of the services will be specified in a statement of services. You or any of your affiliates may enter into statements of services under this agreement with our local affiliate. Our ability to deliver the services depends upon your full and timely cooperation, as well as the accuracy and completeness of any information you provide. This agreement does not obligate either party or its affiliates to enter into any statements of services.

3. Ownership and license of service deliverables.

a. Products and fixes. All products, related solutions and fixes provided under a statement of services will be licensed according to the terms of the license agreement packaged with or otherwise applicable to such product. You are responsible for paying any licensing fees associated with products.

b. Pre-existing work. All pre-existing work will remain the sole property of the party providing the pre-existing work. During the performance of services, each party grants to the other (and our contractors as necessary) a temporary, non-exclusive license to use, reproduce and modify any of its pre-existing work provided to the other party solely for the performance of such services.

Except as may be otherwise explicitly agreed to in a statement of services, upon payment in full, we grant you **or the affiliate signing a statement of services** a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify (if applicable) our pre-existing work in the form delivered to you as part of the service deliverables only for your internal business operations.

The perpetual license to our pre-existing work that we leave to you **or the affiliate signing a statement of services** at the conclusion of our performance of the services is conditioned upon your compliance with the terms of this agreement and the applicable statement of services.

c. Developments. Except as may be otherwise explicitly agreed to in a statement of services, upon payment in full we grant you joint ownership in the developments. You agree to exercise your rights for your internal business operations only and you will not resell or distribute the developments to any third party. Each party shall be the sole owner of any modifications that it makes based upon the developments.

d. Affiliates rights and sublicensing to affiliates. Except as may be otherwise explicitly agreed to in a statement of services, you may sublicense the rights to the service deliverables granted hereunder to your affiliates, but you or your affiliates may not further sublicense these rights.

Any sublicensing of the service deliverables to your affiliates, if permitted, must be consistent with the license terms in this agreement or in any statement of services.

e. Open source license restrictions. Because certain third party software is subject to open source license terms, the license rights that each party has granted to any computer code (or any intellectual property associated therewith) do not include any license, right, power or authority to incorporate, modify, combine and/or distribute that computer code with any other computer code in a manner which would

subject the other's computer code to open source license terms. Furthermore, each party warrants that it will not provide or give to the other party computer code that is governed by open source license terms.

f. Reservation of Rights. All rights not expressly granted in this section are reserved.

4. Restrictions on use. You may not:

- a) Rent, lease, lend, host or otherwise distribute service deliverables or fixes, except as otherwise provided in a statement of services; or
- b) Reverse engineer, de-compile, or disassemble fixes or service deliverables, except to the extent expressly permitted by applicable law despite this limitation.

Fixes and service deliverables licensed under this agreement are subject to U.S. export jurisdiction. You must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end use and destination restrictions by U.S. and other governments related to Microsoft products, services, and technologies. For additional information related to Microsoft compliance with export rules, see www.microsoft.com/exporting.

5. Supportability. We may add support for new products or discontinue support for existing products from time-to-time. If we discontinue support for a product, we will inform you six months in advance of the discontinuation by posting the information at <http://support.microsoft.com> or any successor site. If we sell a product to another company, we will give you notice of the sale and at the time of such notice will either (i) arrange for the other company to continue the support; or (ii) continue support ourselves for 90 days to give you time to make alternative arrangements.

There may be cases where your implementation of our products cannot be effectively supported. As part of providing the support services, we will notify you if we reach that conclusion. If you do not modify the implementation to make it effectively supportable within 30 calendar days after the notice, we will not be obligated to provide additional support services for that implementation, however we will continue to provide support for your other supportable implementations covered by the statement of services.

For statements of services for support, we will use commercially reasonable efforts to provide the support services for those products covered in the statement of services, provided they are validly licensed by you.

6. Fees. You agree to pay us (or our designees) the fees described in each statement of services. The fees do not include fees for products. Unless otherwise stated in a statement of services, (i) you agree to pay within 30 calendar days of the date of our invoice; and (ii) we will not change our hourly rates identified in a statement of services during its term, but we may adjust our hourly rates prior to entering any new or amended statement of services. Our fees exclude any taxes, duties, tariffs, levies or other governmental charges or expenses (including, without limitation, any value added taxes), which will be billed to and paid by you. We are responsible for taxes based upon our personal property ownership and net income.

ALL CONTRACTUAL OBLIGATIONS UNDER THIS CONTRACT IN CONNECTION WITH AN ORDER OR SOW PLACED BY ANY AUTHORIZED USER ARE THE SOLE OBLIGATION OF SUCH AUTHORIZED USER AND NOT THE RESPONSIBILITY OF VITA UNLESS SUCH AUTHORIZED USER IS VITA.

7. Confidentiality. Subject to the requirements of your public records and trade secret laws (if any):

- a. **Confidential information.** Confidential information means information marked or otherwise identified in writing by a party as proprietary or confidential or that, under the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential. It includes, but is not limited to, non-public information regarding either party's products, features, marketing and promotions, and the negotiated terms of this agreement and any statement of services.

Confidential information does not include information which: (i) the recipient developed independently; (ii) the recipient knew before receiving it from the other party; or (iii) is or subsequently becomes publicly available or is received from another source, in both cases other than by a breach of an obligation of confidentiality.

- b. Use of confidential information.** For a period of five years after initial disclosure, neither party will use the other's confidential information without the other's written consent except in furtherance of this business relationship or as expressly permitted by this agreement or disclose the other's confidential information except (i) to obtain advice from legal or financial consultants, or (ii) if compelled by law, in which case the party compelled to make the disclosure will use its best efforts to give the other party notice of the requirement so that the disclosure can be contested.

Each party will take reasonable precautions to safeguard the other's confidential information. Such precautions will be at least as great as those each party takes to protect its own confidential information. Each party will disclose the other's confidential information to its employees, consultants or contractors only on a need-to-know basis, provided that such employees, consultants or contractors are subject to confidentiality obligations no less restrictive than those contained herein. When confidential information is no longer necessary to perform any obligation under any statement of services, each of us will return it to the other party or destroy it at the other's request.

Either party may provide suggestions, comments or other feedback to the other with respect to the other's products and services. Feedback is voluntary and the party receiving feedback may use it for any purpose without obligation of any kind except that the party receiving feedback will not disclose the source of feedback without the consent of the party providing it.

- c. Cooperation in the event of disclosure.** Each party will immediately notify the other upon discovery of any unauthorized use or disclosure of the other party's confidential information and will cooperate in any reasonable way to help the other regain possession of the confidential information and prevent further unauthorized use or disclosure.
- d. Knowledge base.** We may use any technical information we derive from providing services related to our products for problem resolution, troubleshooting, product functionality enhancements and fixes, for our knowledge base. We agree not to identify you or disclose any of your confidential information in any item in the knowledge base.
- e. Unauthorized Disclosure of Commonwealth Personal Information.** *Microsoft warrants it shall immediately notify Customer and Affiliates, if applicable, of any Breach of Unencrypted and Unredacted Personal Information, as those terms are defined herein and in Virginia Code 18.2-186.6, and other personal identifying information, such as insurance data or date of birth, provided by Customer or Affiliate to Microsoft. Supplier shall provide Customer the opportunity to participate in the investigation of the Breach and to exercise control over reporting the unauthorized disclosure, to the extent permitted by law.*

8. Warranties.

- a. Services.** We warrant that all services will be performed with professional care and skill.

b. No other warranties. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM AND EXCLUDE ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS WHETHER EXPRESS, IMPLIED OR STATUTORY OTHER THAN THOSE IDENTIFIED EXPRESSLY IN THIS AGREEMENT (INCLUDING ANY STATEMENT OF SERVICES THAT INCORPORATES THESE TERMS), INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PRODUCTS, FIXES, SERVICE DELIVERABLES,

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RELATED MATERIALS AND SERVICES. WE WILL NOT BE LIABLE FOR ANY SERVICE(S) OR PRODUCT(S) PROVIDED BY THIRD PARTY VENDORS, DEVELOPERS OR CONSULTANTS IDENTIFIED OR REFERRED TO YOU BY US UNLESS SUCH THIRD PARTY PRODUCTS OR SERVICES ARE PROVIDED UNDER OUR WRITTEN AGREEMENT BETWEEN YOU AND US, AND THEN ONLY TO THE EXTENT EXPRESSLY PROVIDED IN THIS AGREEMENT.

9. Defense of infringement and misappropriation claim. We will defend you *or any Affiliate who has signed a Statement of Services* against any claims made by an unaffiliated third party that any service deliverable infringes its patent, copyright, or trademark or misappropriates its trade secret, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent).

You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance in defending the claim, and we will reimburse you for reasonable out of pocket expenses that you incur in providing that assistance. The terms "misappropriation" and "trade secret" are used as defined in the Uniform Trade Secrets Act.

Our obligations will not apply to the extent that any claim or adverse final judgment is based on (i) computer code or materials (e.g. specifications) you provide; (ii) your use of a fix or service deliverables after we notify you to discontinue use due to such a claim; (iii) your combining a fix or service deliverables with a non-Microsoft product, data or business process; (iv) damages attributable to the value of the use of a non-Microsoft product, data or business process; (v) an alteration of fixes or service deliverables by someone other than us or our contractors; (vi) your distribution of the fix or services deliverables to, or its use for the benefit of, any third party other than permitted by an applicable statement of services; (vii) your use of our trademark(s) without express written consent to do so; or (viii) any trade secret claim that is a result of your acquiring a trade secret (a) through improper means; (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) from a person (other than us or our affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret. You will reimburse us for any costs or damages that result from these actions.

If we receive information concerning an infringement claim related to a fix or service deliverables, we may, at our expense and without obligation to do so, either (i) procure for you the right to continue to use the allegedly infringing fix or service deliverables as permitted by the applicable statement of services; or (ii) modify the fix or service deliverables or replace it with a non-infringing functional equivalent, to make it non-infringing. In which case you will stop using the allegedly infringing fix or service deliverables immediately. If as a result of an infringement claim, your use of a fix or service deliverables is enjoined by a court of competent jurisdiction, we will, at our option, either i) procure the right to continue its use; ii) modify it to make it non-infringing; iii) replace it with a non-infringing functional equivalent; or iv) refund the amount paid for the infringing fix or service deliverables and terminate the license for (or as applicable, your ownership rights in) the infringing fix or service deliverable.

If any other type of third party claim is brought against you regarding our Intellectual property, you must notify us promptly in writing. We may, at our option, choose to treat these claims as being covered by this Section 9. This Section 9 provides your exclusive remedy for third party infringement and trade secret misappropriation claims.

Applicable laws that pertain to Customer and Affiliates include §§ 2.2-510 and 2.2-514 of the Code of Virginia The party providing the protection will reimburse the other party for reasonable out of pocket expenses that it incurs in providing assistance. The selection and approval of counsel and any settlement must be satisfactory and approved in writing by both parties. Except for other remedies available at law or in equity, the remedies provided in this section are the exclusive remedies for the claims described in this section.

10. Limitations of liability.

- a. Limitation on Direct Damages.** There may be situations in which you have a right to claim damages or payment from us. Except as otherwise specifically provided in this paragraph, whatever the legal basis for your claims, our total liability (and that of our contractors) will be limited, to the maximum extent permitted by applicable law, to direct damages up to **100% of the amount of the** applicable statement of services for the services giving rise to the claims.

In the event services or any service deliverables are provided to you on a gratuitous or no-charge basis, our total liability to you will not exceed US\$5000. The limitations contained in this paragraph will not apply with respect to the following:

(i) our obligations under Section 9;

(ii) our liability for damages for gross negligence or willful misconduct, to the extent caused by us or our contractors and awarded by a court of final adjudication; and

(iii) our obligations under Section 7.

- b. NO LIABILITY FOR CERTAIN DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY NOR THEIR AFFILIATES, SUPPLIERS OR CONTRACTORS WILL BE LIABLE FOR ANY INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES, DAMAGES FOR LOSS OF PROFITS OR REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION), ARISING IN CONNECTION WITH THIS AGREEMENT, ANY STATEMENT OF SERVICES, SERVICES, SERVICE DELIVERABLES, FIXES, PRODUCTS, OR ANY OTHER MATERIALS OR INFORMATION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. THIS EXCLUSION OF LIABILITY DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATION, REDISTRIBUTION OR OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.
- c. Application.** Except as specified expressly in this Section 10, the limitations on and exclusions of liability for damages in this agreement apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory.

11. Term and termination. This agreement will remain in effect until terminated. The parties signing the cover page of this agreement may terminate it at any time by giving the other party at least 60 calendar days prior written notice.

Either party signing the cover page may terminate this agreement if the other party is in material breach or default of any obligation that is not cured within 30 calendar days' notice of such breach.

The sole effect of terminating this agreement will be to terminate the ability of either party to enter into subsequent statements of services that incorporate the terms of this agreement. Termination of this agreement will not, by itself, result in the termination of any statements of services previously entered into (or extensions of the same) that incorporate the terms of this agreement, and the terms of this agreement will continue in effect for purposes of such statements of services unless and until the statement of services itself is terminated or expires.

The term of any statement of services will be set forth in an applicable statement of services. In addition, unless otherwise provided in a statement of services, your affiliate that signed the statement of services may terminate **it at any time and** for any reason by giving our affiliate that signed the statement of services 30 calendar days' prior written notice. Either party signing a statement of services may terminate it if the other party is (i) in material breach or default of any obligation that is not cured within 30 calendar days' notice of such breach or (ii) fails to pay any invoice that is more than 60 calendar days outstanding. **If a statement of services is terminated, the affiliate agrees** to pay all fees for services performed and expenses incurred prior to termination and any additional amounts that may be specified in a statement of services.

12. Notices. All notices, authorizations, and requests given or made in connection with this agreement must be sent by post, express courier, facsimile or email to the addresses indicated on the cover page of this agreement or on an applicable statement of services, if different. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier, or facsimile or email confirmation of delivery.

13. **Insurance.** We will procure and maintain the following insurance coverage, at all times when performing services on your premises under this agreement, via either commercial insurance, self-insurance, a combination of the two or any other similar risk financing alternative:

- a) Commercial General Liability covering bodily injury and tangible property damage liability with a limit of not less than U.S. \$2,000,000 each occurrence;
- b) Workers' Compensation (or maintenance of a legally permitted and governmentally-approved program of self-insurance) covering Microsoft employees pursuant to applicable state workers' compensation laws for work-related injuries suffered by our employees;
- c) Employer's Liability with limits of not less than U.S. \$1,000,000 per accident;
- d) Professional Liability/Errors & Omissions Liability covering damages arising out of negligent acts, errors, or omissions committed by us or our employees in the performance of services, with a limit of liability of not less than U.S. \$2,000,000 per claim; and
- e) Automobile Liability (if vehicles are brought on your premises or used in the performance of the services) with \$2,000,000 combined single limit per occurrence, for bodily injury and property damage combined covering owned, non-owned and hired vehicles.

We will provide you with evidence of coverage on request.

14. **Miscellaneous.**

- a. **Assignment and right to subcontract.** Neither party may assign this agreement or any statement of services without the written consent of the other, **which consent shall not be unreasonably withheld.** We may use contractors to perform services and we will be responsible for their performance subject to the terms of this agreement.
- b. **Independent contractor.** We provide our services as an independent contractor, and will be responsible for **benefits, including** any and all social security, unemployment, workers' compensation, **health insurance** and other withholding taxes for all of our employees. You and we are free to develop products independently without the use of the other's confidential information. Neither you nor we are obligated to restrict the future work assignments of people who have had access to confidential information. In addition, you, we and these people are free to use the information that these people remember related to information technology, including ideas, concepts, know-how or techniques, so long as confidential information of the other party is not disclosed in violation of this agreement in the course of such use. This use shall not grant either party any rights under the other's copyrights or patents and does not require payment of royalties or separate license.
- c. **Applicable law; dispute resolution.** **This agreement together with the applicable statement of services will be interpreted in accordance with and governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the appropriate Virginia Circuit Court. Microsoft shall comply with all applicable federal, state, and local laws. This does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction as long as it is within the appropriate Virginia Circuit Court.**
- d. **Entire agreement.** This agreement and the statements of services constitute the parties' entire agreement concerning the subject matter hereof, and supersede any other prior and contemporaneous communications. The terms of these documents will control in the following order: (i) this agreement; and (ii) any statement of services. Any terms and conditions maintained by you or your affiliates or contained in any purchase order, other than those mandatory terms required by law, will not apply. The parties signing the cover page of this agreement may amend this agreement only in writing when signed by both parties. The parties signing a statement of services may amend the statement of services only in writing when signed by both parties.

- e. **Survival.** The sections regarding ownership and license, restrictions on use, fees, confidentiality, no other warranties, defense of infringement and misappropriation claims, limitations of liability, term and termination, notices, and miscellaneous of this agreement will survive any termination or expiration of this agreement or any statement of services. Additionally, as provided in Section 11 above if this agreement is terminated all its terms shall survive termination for purposes of any remaining statement of services in existence at the time this agreement is terminated.
- f. **Severability.** If a court holds any provision of this agreement or a statement of services to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and the parties will amend the agreement or statement of services to give effect to the stricken clause to the maximum extent possible.
- g. **Waiver.** No waiver of any breach of this agreement or statement of services will be a waiver of any other breach, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving party.
- h. **Force majeure.** To the extent that either party's performance is prevented or delayed, either totally or in part, for reasons beyond that party's control, then that party will not be liable, so long as it resumes performance as soon as practicable after the reason preventing or delaying performance no longer exists.
- i. **Counterparts.** This agreement and any statements of services may be executed in any number of counterparts, each of which will be an original, and such counterparts together will constitute one and the same instrument. Execution may be effected by delivery of facsimiles of signature pages (and the parties will follow such delivery by prompt delivery of originals of such pages).
- j. **Cost or pricing data.** We will not, under any circumstances, accept any statement of services that would require the submission of cost or pricing data.
- k. **Non-exclusivity.** This agreement (including any statement of services incorporating these terms) is non-exclusive. Nothing contained in it requires you to license, use or promote Microsoft software or services exclusively. You may, if you choose, enter into agreements with other parties to license, use or promote non-Microsoft software or services.
- l. **Microsoft's Report of Sales and Industrial Funding Adjustment.** *By the 10th day of every month, the Supplier shall submit the "Supplier Monthly Report of Sales." A template showing the format in which the report is to be submitted and contact information for submission is available at <http://www.vita.virginia.gov/scm/default.aspx?id=97> under "Supplier Reporting." The report shall be submitted via electronic mail to the VITA IFA Coordinator and shall report total sales (defined for purposes of this report as all invoiced payments received by Supplier from all Authorized User) for this Contract during the preceding month. Supplier shall be responsible for submitting the monthly report of sales even if Supplier has had no sales (i.e., a \$0.00 total sales value) for the reporting period.*
- The Supplier shall submit the Industrial Funding Adjustment (IFA) payment for the period covered by such "Supplier Monthly Report of Sales" within thirty (30) days after submitting the "Supplier Monthly Report of Sales." The IFA payment is equal to two percent (2%) of total sales reported during the relevant month.*
- The IFA payment shall be submitted to VITA, Attention VITA Controller in the form of a check or electronic payment, made payable to the Treasurer of Virginia. The IFA payment shall reference this Contract number, "report amounts," and "report period" and shall be accompanied by a copy of the relevant "Supplier Monthly Report of*

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Sales.” Contact information for submission of IFA payments is available at <http://www.vita.virginia.gov/scm/default.aspx?id=97> under “Supplier Reporting.”

FY16 Public Sector Published Price List

Microsoft Consulting Services

Effective Date:

July 1, 2015

Prepared by:

David Gallagher

Director of Contracts

dgallagh@microsoft.com

12012 Sunset Hills Road

Reston, VA 20190

(703) 673-7871

(425) 708-0482 (Fax)

1.0 Microsoft Services Background

Microsoft Consulting Services (MCS) has been an integral part of Microsoft since 1990, helping hundreds of large organizations worldwide build information technology solutions. MCS Practices are located at Microsoft field offices around the world.

1.1 Public Sector Mission

Our mission is to serve as Trusted Technical Advisors and Architects to Microsoft Public Sector Customers and Partners, helping them architect plan, design and implement solutions leveraging Microsoft products, tools and technologies. MCS Consultants work with customers on specific projects and strategic initiatives and enable customers to gain knowledge in Microsoft product sets and methodologies to build self-sufficiency over time. MCS is the appropriate Microsoft resource to utilize when customer project requirements demand direct Microsoft involvement.

1.2 Microsoft Services Rates

<u>MCS Labor Category</u>	<u>Hourly Rates</u>	<u>Hourly Rates (Cleared)</u>
ARCHITECTURAL CONSULTANT	\$291.00	\$299.00
PRINCIPAL CONSULTANT	\$278.00	\$288.00
GENERAL MANAGER	\$295.00	\$299.00
PRACTICE MANAGER	\$274.00	\$285.00
ENGAGEMENT MANAGER	\$263.00	\$273.00
PROJECT MANAGER	\$263.00	\$273.00
SENIOR CONSULTANT	\$263.00	\$273.00
CONSULTANT	\$238.00	\$248.00
ASSOCIATE CONSULTANT	\$210.00	\$219.00
<u>MCS PARTNER RATES:</u>	<u>Hourly Rates</u>	<u>Hourly Rates</u>
TECHNICIAN V	\$250.00	\$250.00
TECHNICIAN IV	\$232.00	\$232.00
TECHNICIAN III	\$206.00	\$206.00
TECHNICIAN II	\$180.00	\$180.00
TECHNICIAN I	\$155.00	\$155.00
TECHNICIAN	\$129.00	\$129.00
ASSOCIATE TECHNICIAN	\$103.00	\$103.00

"Cleared" Hourly rates shall apply whenever the customer requires a Secret or higher level security clearance (or Agency equivalent type clearance) either by the issuance of a DD254 or otherwise specifying such security requirements in the contract documents.

Microsoft Global Delivery (GD)

Offshore Rates

- MSFT GD Consulting – (FTE) \$73.00/Hr.
- MSFT GD ACE/SIAM – (FTE) \$110.00/Hr.
- MSFT GD – (Partner) \$42.00/Hr.

Onshore Rates:

- MSFT GD Consulting – (FTE) \$175.00/Hr.
- MSFT GD ACE/SIAM – (FTE) \$175.00/Hr.
 - Daily per diem and other travel is charged IAW government travel regulations.
 - Note: Initial air fare to/from India is not charged to customer.

Note:

- *The labor category from which personnel will be assigned will be specified by Microsoft in a Work Order based on the nature of the services to be provided.*
- *Microsoft reserves the right to revise our rates at anytime.*

Point of Contact

David T. Gallagher, Director of Contracts
U.S. Public Sector Services
12012 Sunset Hills Road
Reston, VA 20190
Phone (703) 673-7871, Fax (425) 708-0482
Email: dgallagh@Microsoft.com
