

These General Terms and Conditions are effective as of the acceptance date of the associated Solution Proposal (the "Effective Date"), by and between Vytelis Inc., a Virginia Corporation located at 3905 Townsley Street, Fredericksburg, VA 22408 (hereinafter the "Service Provider") and Client (as listed in the associated Solution Proposal).

These Terms and Conditions supersede any previous Master Service Agreement or Retainer Services Agreement. WHEREAS, Client has the full right, power, and authority to enter into these Terms and Conditions,

WHEREAS, Service Provider is an independent contractor and is neither an agent nor employee of Client, WHEREAS, The Client desires to engage the Service Provider to provide business and technology services,

WHEREAS, The purpose is to establish mutually satisfactory terms and conditions for services to be performed by the Service Provider for the Client.

NOW, THEREFORE, for the mutual consideration set forth herein, the adequacy of which is hereby acknowledged, Client and Service Provider hereby agree as follows:

Terms and Conditions for Delivery of Service

The Terms and Conditions contained in this document constitute a Legal Agreement. Client agrees to abide by the terms and conditions of this Agreement and to pay the fees, taxes and surcharges set forth in the associated Solution Proposal (collectively the "Service Fee").

1. Coverage Agreement.

a. General Conditions

- i. Vytelis reserves the right to bill for labor incurred during a server recovery if circumstances surrounding the customer's server failure meet the following codifications in whole or in part:
 1. Environmental failure events that render hardware unusable.
 2. Force Majeure events beyond Vytelis' reasonable control, including but not limited to Acts of God, government regulation, labor strikes, natural disaster, war and national emergency.
 3. Any act or omission on the part of any third party other than Vytelis.

b. Services

- i. Employee Service Desk - Authorized employees will have access to the Service Desk for resolving technical support requests (TSRs).
 1. Authorized employees will be finalized and listed prior to starting the Service Desk, this will constitute the size of the organization.
 2. We will educate employees on registering service calls during our Service Desk kick off meeting. Employees will be able to register service requests using two methods:
 - a. by calling our support desk at 833-898-3547, Option 2
 - b. or by emailing us at servicedesk@vytelis.com.
 3. Service requests will be worked through over the phone with the end employee to resolve the problem for up to 15 minutes or less. We will then move to take remote control of the employee machine to continue working on the problem.
 4. The goal will be to resolve employee problems remotely and get the employee up and running as soon as possible.
 - a. Upon approval from the affected employee, we will dispatch a technician desk side when remote resolution does not work or begins to impinge on an employee's ability to work.



5. Prior to dispatch, we will escalate the service request to your onsite contact, a staff member you designate. The onsite contact will act as the eyes and hands of our technician when needed.
6. We will record each call made to our Service Desk and the effort required to resolve it. Management reports are made available and reviewed on a monthly basis.
7. Employees can access the service desk from 7:00 a.m. to 6:00 p.m. Eastern Time Zone. After hours service is provided as an on-call service, email and voicemail will be responded to according to non-business SLA defined below in section 4.

2. Covered Locations

- a. We will provide coverage to all machines located at the business address listed in the Terms and Conditions on the signed Solution Proposal.
- b. Laptops and handheld devices not located at the primary business location(s) listed in the Solution Proposal will be given best effort support. We do not have control over your non-business location internet connections and therefore cannot guarantee successful resolution of end employee systems when outside of the primary business location.
- c. Home office locations are not covered in this agreement, unless agreed upon and listed in an addendum and attached to this agreement. In order for a location to be covered, all configuration detail and access to these environments must be provided by the client.

3. Standard Hardware and Software

- a. Standard Hardware and software is defined on our website at the <http://www.vytelis.com/solution-standards> page.
- b. Any application not listed in this section is considered non-standard and must be supplied by the client and include a valid support agreement, with Vytelis listed as a technical contact.

4. SLA Response Level

- a. SLA Hours of Operation Definition
 - i. Business Hours
 1. Monday – Friday: 7 AM to 6 PM Eastern Time Zone
 - ii. Non-Business Hours
 1. Friday 6 PM – Monday 7 AM Eastern Time Zone; Monday – Friday: 6 PM to 7 AM Eastern Time Zone
 2. Observed Holidays
 - a. New Year's Day
 - b. Memorial Day
 - c. Independence Day
 - d. Labor Day
 - e. Veteran's Day
 - f. Thanksgiving Day
 - g. Christmas Day
- b. Level 1: Major business disruptions as defined as critical business applications, platforms, network connectivity or issues that prevent Client from conducting business or there is no alternate process for conducting business.
 - i. Business Hours
 1. Off-site less than 15 minutes
 2. On-Site within 2 hours
 - ii. Non-Business Hours
 1. Off-site less than 60 minutes



2. On-Site within 4 hours
 - c. Level 2: Minor business disruptions as defined by slow or intermittent disruptions to the performance of business applications, platforms, connectivity or issues that degrade the Client's ability to conduct business.
 - i. Business Hours
 1. Off-site less than 2 hours
 2. On-Site within 24 hours
 - ii. Non-Business Hours
 1. Off-site less than 4 hours
 2. On-Site Scheduled during business hours
 - d. Level 3: Non-critical problems as defined as software upgrades, non-critical business software installations, firmware updates and hardware repairs and service/upgrades.
 - i. Business Hours
 1. Off-site and on-site as normally scheduled or as negotiated per issue.
 - ii. Non-Business Hours
 1. Off-site and on-site as normally scheduled or as negotiated per issue.
 - e. Response times are not guaranteed in the event there is an inability to reach Client due to critical infrastructure outages to means of communication and transportation, such as phone, Internet, roads, and transportation networks; acts of God, terrorism, war, and natural disasters.
 - f. Negotiated response times per issue must be confirmed by both Service Provider and Client via e-mail (signed faxes, change work orders, service orders or quotes are acceptable as well).
 - g. Business applications refer to operating systems, productivity software or any software used by Client to conduct business that Service Provider has agreed to service.
 - h. Platforms refer to computer systems such as servers, workstations, laptops and printers.
 - i. On-site access requires Client to provide physical access to location in which service is needed.
5. Changes in Scope of Services

Changes to the scope of the Services shall be made only in writing executed by authorized representatives of both parties. Service Provider shall have no obligation to commence work, or provide hardware and/or software in connection with any change until the fee and/or schedule impact of the change is agreed upon by the parties in writing.
6. Period of Performance

The period of performance under this Agreement shall begin on the Effective Date and shall continue thirty-six (36) months thereafter, provided the Client notifies Service Provider of its intention to terminate this Agreement no less than sixty (60) days prior to the anniversary date, unless sooner terminated in accordance with the provisions herein or altered or extended by modification in writing. Absent Client's notification to Service Provider of its intention to terminate the Agreement sixty (60) days prior to the anniversary date, this Agreement will renew for additional twelve (12) month periods.
7. Service Fee
 - a. The Service fee is based on the rate specified in the Pricing Quote section and is based on the size of the organization and any chosen add-on services. Any discounts are reflected in this section. Prices are valid for 36 months from the start date of the contract. Organization size will be audited on a semi-annual basis, and any adjustments to the service fee will be made based on the pricing quoted for the size of the organization at the time of the contract start date.
 - b. All payments will be pre-paid monthly.
 - c. Client agrees to pay the Service Fee within thirty (30) days of receipt of Service Provider's invoice.



Payments not received within thirty days of invoice issuance shall be considered Past Due. Payments shall be made by check payable to Service Provider or by electronic transfer as mutually agreed.

- d. Past Due balances shall be assessed a late fee of \$50.00; additionally, Interest will accrue on past-due balances at the lower of: (i) one and a half percent (1.5%) per month, or (ii) the highest rate permitted by applicable law. If Services are disconnected as a result of nonpayment of fees and subsequently reconnected, Client will be required to pay a reconnection fee of \$250 in addition to any late fee or applicable interest.
- e. Taxes and surcharges imposed by third parties may change from time to time; such changes will be reflected on Client's monthly invoices.

8. Equipment and Facilities.

- a. Client acknowledges and agrees that the use of the Services may require certain equipment to be provided by Service Provider. In addition, Service Provider may install certain equipment in order to provide Services to Client ("Service Provider Equipment"). All equipment requirements and terms shall be set forth in a separate contract to be provided within 10 days of accepting this proposal.
- b. Client acknowledges that in order to provide the Services, Service Provider may need to install certain facilities, including but not limited to cable, wiring, conduit, racks, telecommunications equipment, electronic equipment, and any associated hardware at each premises identified herein (the "Premises"), and will need access from time to time to the Premises for installation, repair and/or maintenance purposes. Client will cooperate with or assist Service Provider in obtaining the right to install the Service Provider Installation Hardware in the Premises not controlled by Client, and hereby grants Service Provider unfettered access to the Premises controlled by Client as reasonably requested by Service Provider from time to time. If the property on which the Premises is located is owned by a third party to this Agreement, Service Provider's obligations under this Agreement shall be expressly contingent upon Client's ability to secure a right of entry for Service Provider onto said property; in the event Client owns the property on which the Premises are located, Client shall execute and attach hereto the "Right of Entry" rider.
- c. Client shall refrain from causing any damage to the Service Provider Equipment. Client will promptly notify Service Provider of any damage that may occur to Service Provider Equipment or of any circumstance that poses a threat to the Service Provider Equipment located or installed at the Premises. Client will not relocate, repair, or otherwise disturb the Service Provider Equipment without Service Provider's prior written consent.

9. Disclaimer of Warranties.

In accordance with provisions of the Uniform Commercial Code and the laws of the jurisdiction specified herein, SERVICE PROVIDER MAKES NO REPRESENTATION OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND/OR MERCHANTABILITY. UNDER NO CIRCUMSTANCES SHALL SERVICE PROVIDER BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, DIRECT OR INDIRECT DAMAGES EXCEPT THOSE DAMAGES ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SERVICE PROVIDER. IN NO EVENT SHALL THE SERVICE PROVIDER BE LIABLE FOR ANY ACTUAL OR CONSEQUENTIAL DAMAGES EXCEEDING THE TOTAL VALUE OF THE SERVICES PROVIDED UNDER THIS AGREEMENT.

10. Limitation of Liability.

- a. Service Provider shall have no liability whatsoever for any damage, loss or destruction to the Client Equipment unless such damage, loss or destruction is due to the negligence or misconduct by Service Provider.
- b. IN NO EVENT SHALL EITHER PARTY OR ANY OF SERVICE PROVIDER'S SUPPLIERS (INCLUDING CUSTOMER'S LANDLORD) BE LIABLE FOR ANY LOST DATA, LOSS OF REVENUE, LOST PROFITS, COSTS



OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, OR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE OR TORT) ARISING OUT OF THIS AGREEMENT, OR THE SERVICES AND PRODUCTS PROVIDED HEREUNDER, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE AMOUNTS PAYABLE HEREUNDER BY CUSTOMER ARE BASED IN PART UPON THESE LIMITATIONS, AND FURTHER AGREES THAT THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

11. Termination.

- a. Either party may terminate this Agreement by giving not less than ninety (90) days' prior written notice to the other party. Except in the event of Service Provider's default, as specified in Section 11(b).
- b. If either party defaults in the performance of any material provision of this Agreement, then the non-defaulting party may give written notice to the defaulting party that if the default is not cured within thirty (30) days, the Agreement will be terminated. If the non-defaulting party gives such notice and the default is not cured during the thirty (30) day period, then the Agreement shall automatically terminate at the end of that period. In the event Service Provider terminates this Agreement as a result of any uncured default by Client, Client shall pay as liquidated damages the sum of all remaining monthly Service Fees (as well as any past due balances or late fees as specified by Section 7(d) of this Agreement) due under the balance of the Agreement.
- c. This Agreement shall terminate, without notice, (i) upon the institution by or against either party of insolvency, receivership or bankruptcy proceedings or any proceedings for the settlement of such party's debts, (ii) upon either party's making an assignment for the benefit of the creditors, or (iii) upon either party's dissolution or ceasing to do business, unless due to an assignment as set forth in Section 15(d).
- d. Upon any termination or expiration of this Agreement, Service Provider shall provide reasonable assistance and information to enable Client to transition the services to Client or another provider to ensure that it does not have any unreasonable disruptions; such assistance shall be billed at the agreement amount at the time of termination, and shall continue until the earlier of: (i) completion of the transition to the mutual satisfaction of the parties, or (ii) thirty (30) days from the date of termination. All materials and information belonging to Client shall be returned to Client upon termination or expiration of this Agreement, or at any time upon request. All data on Service Provider systems is the property of the Client and shall be retained by the client, and removed from Service Provider equipment and software systems.
- e. With respect to Service Provider Equipment, upon any expiration of this Agreement, Client shall return all Service Provider Equipment and software provided as part of this service offering. Alternatively, upon request from the client, Service Provider may offer a purchase option not to exceed 10% above FMV of the hardware. All Software will need to be purchased at retail.
- f. In the event of termination of an agreement which includes Hardware as a Service and/or Desktop as a Service prior to the end of the term, Service Provider reserves the right to assign, for financing purposes, the rights to the Service Provider Equipment to a third party, per the terms of the Rental Agreement associated with those services.

12. Restrictions on Use

Client agrees that Client shall not sell the Services to third parties or charge third parties any fees for using the Services, and that Client (and its employees, agents or others with access through Client to the Services) will abide any acceptable use policies promulgated by Service Provider and delivered to or made known to Client prior to purchasing the Services. This term does not apply to commonly owned companies of Client



or any site agreed to under section 2 above, where the provision of services is required as part of this agreement.

13. Indemnification

Client hereby indemnifies, saves, and holds Service Provider, its successors and assigns, harmless from any and all liability, claims, demands, loss and damage (including legal fees and court costs) arising out of or connected with any claim or action by a third party which is inconsistent with any of the above warranties and representations made by Client and shall reimburse Service Provider for any loss, cost, expense, or damage to which said indemnity applies. Service Provider shall give Client prompt written notice of any claim or action covered by this indemnity, and Client shall have the right, at its own expense, to participate in any such action. Such indemnification shall not apply in the event of negligence or misconduct of Service Provider.

14. Modifications, Amendments & Notices

Sole authority to make changes in or amendments to this agreement, period of performance or other terms and conditions of this Agreement is hereby vested in the authorized representatives of Service Provider and Client, and no directions from such representatives shall be valid unless in writing. All notice given by Service Provider to Client or by Client to Service Provider shall be sent by registered or certified mail, by facsimile, or by e-mail addressed as specified in below.

15. General Provisions

- a. **Force Majeure.** If the performance of this Agreement or any obligation hereunder is prevented, restricted or interfered with by reason of "force majeure", i.e., any act or condition beyond the reasonable control of the parties hereto, the party whose performance is so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction, or interference; provided that the party so affected shall take all reasonable steps to avoid or remove such causes of nonperformance and shall continue performance hereunder with dispatch whenever such causes are removed; provided, further, that if it appears that the time of delivery or performance will be extended past the terms set by this Agreement, the party who is not relying upon the force majeure condition shall have the right to terminate this Agreement under the requirements of Section 11 of this Agreement. No extension of time shall be granted for delays on account of or resulting from weather conditions except for flood, cyclone, hurricane, tornado, earthquake, or other similar catastrophe. Subject to the provisions above, neither party shall be liable for damages for delay in delivery or performance arising out of causes beyond its control and without its fault or negligence.
- b. **Whole Agreement.** This Agreement, together with any Solution Proposal or Rental Agreement attached hereto, and the documents incorporated herein by reference, constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all past contracts and agreements between the parties related to the subject matter of this Agreement. The parties hereby agree that any other terms and conditions included in any quotes, acknowledgments, bills of lading, or other forms utilized or exchanges by the parties hereto shall not be incorporated herein or be binding unless made a modification to this Agreement pursuant to Section 14 hereof.
- c. **Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to each jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereto or affecting the validity or enforceability of such provision in any other jurisdiction.
- d. **Assignment.** This Agreement provides for personal or professional services and deliverables and shall be binding on the parties hereto and their successors and assigns. Service Provider shall have the right to assign or otherwise transfer its rights, liabilities or obligations under this Agreement.



Client shall not have the right to assign or otherwise transfer its rights. The rights and obligations of the parties hereunder shall inure to the benefit of and shall be binding upon the parties, their successors and duly authorized assigns.

- e. **Forum and Governing Law.** The construction and meaning of the terms and provisions of this Agreement shall be interpreted in accordance with the laws of the Commonwealth of Virginia, without reference to the choice of law provisions thereof, and the parties agree that any appropriate state or federal district court located in Commonwealth of Virginia shall have exclusive jurisdiction over any case or controversy arising under or in connection with this Agreement. Each party hereto expressly consents to the personal jurisdiction of such courts.
- f. **No Waiver.** The failure of either party at any time to enforce any right or remedy available to it under this Agreement with respect to any breach or failure by either party shall not be construed to be a waiver of such right or remedy with respect to any other breach or failure by either party.
- g. **Captions and Section Headings Disclaimer.** The captions and Section Headings to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.
- h. **Order of Precedence.** In the event of an inconsistency between the provisions of this Agreement and any Statement(s) of Work or attachments hereto the inconsistency shall be resolved by giving precedence in the following order: 1) the Agreement; 2) all other documents incorporated by reference.
- i. **Survival.** The provisions of Sections 9, 13, 14, and 15 of this Agreement shall survive any termination of this Agreement for any reason or cause whatsoever.

16. Quality Assurance

We provide assurance that all services and <http://www.vytelis.com/solution-standards> will meet the expectations of the client. Should any of the services or infrastructure fail to perform to the standards we defined in our service offering, we will rectify the situation within 30 days at no cost to the client.

Last Updated: January 10, 2019

