

Master Services Agreement

1. Preamble

- 1.1. This Master Services Agreement, together with all of its Appendices and any accompanying Statements of Work (collectively, the “Agreement”), is effective on [date] (the “Effective Date”), and is between WorldVistA, a 501(c)(3) non-profit foundation incorporated in California with registered office at 319 Heron Drive, Pittsburg, California 94565 (“WorldVistA”) and [Organization Name], incorporated in [Incorporation State] and located at [Organization Address] (“Organization”).
- 1.2. WorldVistA has successfully obtained from the Certification Commission for Healthcare Information Technology (“CCHIT”) certification that its WorldVistA EHR/VOE 1.0 software (“Software”) meets CCHIT’s 2006 Ambulatory criteria for Electronic Health Record (“EHR”) software (hereinafter, “Certification,” and Software that has such Certification may be referred to as “Certified”). The terms and conditions of this Agreement are intended to ensure, among other things, that Certification of the Software is not jeopardized by Organization’s use of the Software hereunder. Nothing in this Agreement establishes a relationship between Organization and CCHIT, and no right of Certification or other product certification is conferred by CCHIT to Organization hereunder.
- 1.3. This document sets forth terms under which Organization may claim Certification for Software it uses in an Authorized Production Environment. From time to time, WorldVistA may obtain from CCHIT certification for newer versions of the Software and/or for newer criteria which are required of an Authorized Production Environment. The term Software herein shall also apply to such newer versions of the Software, and the term Authorized Production Environment herein shall also apply to such newer criteria. For clarity, although WorldVistA has obtained Certification from CCHIT for the Software, Organization may only claim that the Software is “Certified” if and when it is used in an Authorized Production Environment.
- 1.4. With parts of the source code for Software in the public domain (e.g., as provided by the U.S. Department of Veterans Affairs), and other parts Copyright WorldVistA and licensed under the GNU General Public License (“License” – as defined at <http://www.gnu.org/licenses/gpl.txt>), source code for software that is substantially equivalent to the Software is freely available to Organization independent of this Agreement. However, neither this Agreement nor the License entitles or permits Organization to claim that the deployment or use of such other software is “Certified.”
- 1.5. Pursuant to this Agreement, WorldVistA wishes to provide its Certified Software to Organization for deployment and use at a particular Authorized Production Environment. From time to time, Organization may choose to acquire Certified Software from WorldVistA for deployment and use at additional Production Environments. The specific location and

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conditions of deployment and use of future Production Environments, which are necessary for such future Production Environments to be deemed Additional Authorized Production Environments under this Agreement, will be set forth in one or more Statements of Work that WorldVistA and Organization may execute pursuant to this Agreement as specified in Section 1.6. Each Statement of Work shall be incorporated into and become part of this Agreement and be governed by the provisions of this Agreement. In the event of a conflict between the terms and conditions of this Agreement and a Statement of Work, the provisions of the Agreement shall prevail.

- 1.6. Organization may obtain Authorization for Additional Authorized Production Environments under identical conditions as the original Authorized Production Environment for which Organization entered into this Agreement with WorldVistA by executing a Statement of Work. To execute such a Statement of Work, Organization will use a form to submit the information required for WorldVistA to analyze the request for Additional Authorized Production Environments and arrange for payment of the required Registration Fee (at WorldVistA's option, means for such submitting information and making payment may be provided electronically via the Internet). Upon approval of such request, which approval is in WorldVistA's sole discretion, the Statement of Work shall be made a part of this Agreement.
- 1.7. Prior to the ending date of this Agreement (as set forth under Duration of Agreement in Appendix A hereto), WorldVistA may, at its option and in its sole discretion, provide means for Organization to extend the ending date by paying a fee. To execute such an extension of the Duration of Agreement, Organization will submit the information required for WorldVistA to analyze the request to extend the Duration of Agreement and arrange for payment of the required Registration Fee (at WorldVistA's option, means for submitting information and making payment may be provided electronically via the Internet). Such extension will take effect only upon approval by WorldVistA, which approval is in WorldVistA's sole discretion, and is subject to Section 2.5 of this Agreement.

2. Definitions

In addition to terms defined elsewhere in the Agreement, other terms are defined below:

- 2.1. **Additional Authorized Production Environment** — An Authorized Production Environment in addition to that for which Agreement is signed for which Organization desires Authorization under identical conditions to original Authorized Production Environment for which Organization entered into Agreement with WorldVistA, and which is approved by WorldVistA.

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- 2.2. **Authorized Production Environment** — A Production Environment satisfying the requirements of this Agreement.
- 2.3. **Certified/Certification** — A claim made by Organization, with WorldVistA's knowledge and permission as described in this Agreement, that a Production Environment uses Software certified by the CCHIT only in an Authorized Production Environment.
- 2.4. **Contact** — One or more individuals, as identified in Appendix A for Organization and WorldVistA. Communication from Organization or WorldVistA to the other shall be directed to these individuals. Organization and WorldVistA may identify separate Contacts for business matters and technical matters, and there may be primary and backup Contacts.
- 2.5. **Duration of Agreement** — A period of time defined by starting and ending dates, both dates inclusive, as specified in Appendix A, as may be amended by agreement of the parties; provided, however, that the Duration of Agreement cannot and does not extend beyond the date through which WorldVistA has obtained Certification for Software from CCHIT.
- 2.6. **End User** — The entity for whose patients an Authorized Production Environment is being managed by Organization. If End User is different than Organization, End User must be identified in Appendix A. For clarity, End User may be the same entity as Organization or it may be a different entity on whose behalf Organization operates and manages the Production Environment. Also for clarity, Agreement is between WorldVistA and Organization and not between WorldVistA and End User, if End User is different from Organization.
- 2.7. **Environment** — A single logically consistent and complete set of program modules in source and/or object form, database, and scripts needed to execute Software that is under the management and control of Organization. For clarity, an Environment may (a) include multiple directories and file systems on a computer system, and (b) have multiple instances on multiple computer systems that are geographically separated but kept consistent with one another through technologies, processes and procedures such as database replication, disk shadowing, etc. Also for clarity, elements of an Environment such as program modules may be shared with other Environments, where one or more Environments may be Certified and others are not.
- 2.8. **Notification** — The process by which one party to Agreement communicates with the other party. When a party is required to notify the other party, it will send e-mail to the appropriate Contact and utilize either facsimile or overnight courier service as specified in Appendix A. Party sending notification will retain receipt of successful facsimile transmission or delivery notification by courier service. The receiving party is deemed to have been notified one business day after transmission of e-mail or one business day after receipt of facsimile or delivery by courier service, whichever is later.

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- 2.9. **Production Environment** — A single Environment that is intended for, or is in, use for managing the actual health care data of real people when providing care. For clarity, environments used for software development and testing are not Production Environments even if they contain real patient data.
- 2.10. **Publicity Materials** — All promotional materials, advertising, public statements, news releases, and other media & publicity materials, in any and all media, including both print “hard copy” as well as electronic “soft copy” that mention WorldVistA, WorldVistA EHR, CCHIT, or CCHIT’s Certification Program or display any marks associated with the names.
- 2.11. **Registration Fee** — An amount as described in Appendix A paid by Organization to WorldVistA.

3. Terms and Conditions

- 3.1. As long as Organization complies with Agreement, manages its Production Environment(s) in accordance with the terms of Appendix C, and pays WorldVistA the Registration Fee, Organization is permitted to claim, as described in Appendix B, that such Production Environment(s) (a) is/are Authorized Production Environment(s), (b) is/are Authorized for the Duration of Agreement, and (c) is/are deploying or using Software that is Certified.
- 3.2. Organization shall not claim that any Software is Certified when such Software is deployed or used in any Production Environment (a) where the use of Software does not comply with Agreement, (b) where such is not an Authorized Production Environment, (c) where Organization has not paid the Registration Fee, or (d) when the claim is made on dates outside of the Duration of Agreement.
- 3.3. Organization will pay WorldVistA a Registration Fee as described in Appendix A.
- 3.4. If Organization manages and controls one or more Environments where its use of Software does not comply with Agreement, including without limitation because such Environment is not an Authorized Production Environment, Organization will exercise due diligence to ensure that neither a lay person nor a person knowledgeable about Software is likely to be led to believe that (a) such Environments are Authorized Production Environments, or (b) that such Software used in the Environments is Certified.
- 3.5. In the event Organization becomes aware that a Production Environment (previously deemed to be an Authorized Production Environment) is not in compliance with Agreement, Organization will immediately cease to claim that such Production Environment is an Authorized Production Environment, will not refer to any Software deployed or used in that Production Environment as Certified, and will notify WorldVistA within three (3) business

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days of the Production Environment being non-compliant. If such non-compliant Production Environment is brought back into compliance, Organization may notify WorldVistA that such Production Environment is again in compliance with Agreement and, following approval by WorldVistA, may again claim Certification for such Production Environment as an Authorized Production Environment. For clarity, when an Authorized Production Environment is brought back into compliance within the Duration of Agreement, an additional Registration Fee need not be paid. If, however, an Authorized Production Environment ceases to be in compliance and is not returned to compliance, Organization is not entitled to any refund of part or all of the Registration Fee.

- 3.6. WorldVistA may, at its discretion, require Organization to install software that operates within the Authorized Production Environment to monitor Organization's compliance with this Agreement. Organization must provide WorldVistA with reasonable access by mutually agreeable means to Organization's Authorized Production Environment to enable WorldVistA to install such software and to monitor operation of the Authorized Production Environment and monitoring software. Organization must not interfere with the operation of, modify, or reverse engineer WorldVistA's monitoring software. Such monitoring software remains the exclusive property of WorldVistA. When WorldVistA accesses Authorized Production Environments, it agrees to abide by appropriate law and Organization policy pertaining to patient confidentiality and to sign such reasonable confidentiality agreement as may be required by Organization to maintain compliance with appropriate law.
- 3.7. Organization may unilaterally terminate Agreement for convenience at any time, and without providing a reason for doing so, by providing Notification to WorldVistA. Organization is entitled to no refund of the Registration Fee for unilateral termination for convenience and Organization must thereafter cease referring to the Software as being Certified and to Production Environment as being an Authorized Production Environment.
- 3.8. WorldVistA may alter the Agreement at any time by providing Notification to Organization at least thirty (30) calendar days before alterations take effect. If the alterations are not acceptable to Organization, Organization may provide Notification within this thirty (30) day period to WorldVistA that Organization wishes to terminate the Agreement for this reason. Such termination will be effective the date the alterations take effect. If Organization chooses to so terminate Agreement, WorldVistA will refund a pro-rated portion of the Registration Fee within thirty (30) calendar days of the date of termination.
- 3.9. Notwithstanding Organization's compliance with this Agreement, in the event CCHIT claims that Organization is not entitled to claim Certification of its Authorized Production Environment(s) under this Agreement, WorldVistA will make reasonable commercial efforts to reacquire from CCHIT the necessary permissions to allow Organization to continue to claim that the Software being deployed and used in Organization's Authorized Production

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Environments is Certified. In the event that WorldVistA is unable to obtain permission from CCHIT as needed to allow Organization to continue to claim that the Software being deployed and used in Organization's Authorized Production Environment is Certified, WorldVistA will refund a pro-rated amount of the Registration Fee to Organization in a timely manner.

4. Warranties and Representations

- 4.1. Both WorldVistA and Organization will continue to own all right, title and interest in and to any inventions however embodied, know how, works in any media, software, information, trade secrets, materials, property or proprietary interest that it owned prior to this Agreement, or that it created or acquired independently of its obligations pursuant to this Agreement (collectively, "Retained Rights"). All Retained Rights not expressly transferred or licensed in this Agreement are reserved to the respective owner.
- 4.2. Both WorldVistA and Organization each represent and warrant that they have obtained all necessary corporate approvals to enter into this Agreement and that no consent, approval, or withholding of objection is required from any external authority with respect to the entering into of this Agreement. WorldVistA and Organization further represent and warrant that they are under no obligation or restriction, nor will they assume any such obligation or restriction, that would in any way interfere or conflict with any obligations under this Agreement.
- 4.3. Both WorldVistA and Organization covenant that they will comply with all applicable laws and regulations in their conduct pursuant to this Agreement.
- 4.4. WORLDVISTA MAKES NO CLAIM THAT CERTIFICATION ENHANCES ORGANIZATION'S ABILITY TO CONDUCT BUSINESS. SUCH DETERMINATION OF THE SUITABILITY OF CERTIFICATION TO ORGANIZATION'S ACTIVITIES IS MADE SOLELY BY ORGANIZATION. FURTHER, EXCEPT FOR THE FOREGOING, WORLDVISTA EXCLUDES AND HEREBY DISCLAIMS ALL WARRANTIES, CONDITIONS AND STATEMENTS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND WORLDVISTA FURTHER EXCLUDES AND HEREBY DISCLAIMS ALL WARRANTIES, CONDITIONS AND STATEMENTS, WHETHER EXPRESS, IMPLIED OR STATUTORY, THAT THE SOFTWARE WILL BE FREE FROM CLAIMS OF INFRINGEMENT OR THAT THE SOFTWARE WILL BE ERROR-FREE.

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5. Indemnification

- 5.1. Organization agrees, at its sole expense, to indemnify WorldVistA from any claims, suits, liabilities, or proceedings resulting from (a) Organization's operation and use of the Software; (b) and from Organization's operation and use of its Authorized Production Environment(s), and (c) Organization's claims of Certification of the Software without authorization or outside of the requirements or conditions for Certification as set out in this Agreement, including reasonable attorney's fees, costs, judgments, settlement amounts and related expenses.
- 5.2. The indemnification requirements of Section 5.1 shall extend indefinitely beyond the Duration of Agreement and shall survive the termination of this Agreement.

6. Relationship of Parties

- 6.1. Both WorldVistA and Organization agree that nothing herein shall entitle either WorldVistA or Organization to be a representative, agent, partner or joint venturer of the other.

7. General

- 7.1. This Agreement shall be interpreted in accordance with the laws of the State of California and the United States of America.
- 7.2. In the event of a dispute of any nature pertaining to the Agreement, WorldVistA and Organization agree to binding arbitration conducted by the American Arbitration Association.
- 7.3. Organization may not assign all or any portion of its rights or obligations under this Agreement to any third party without the prior written consent of WorldVistA, which may be granted or withheld in WorldVistA's sole discretion.
- 7.4. This Agreement, including any Appendices, schedules, exhibits, or Statements of Work referred to makes up the entire agreement between the parties with respect to the subject matter contained in the Agreement and supersedes all prior agreements, whether written or oral, with respect to such subject matter.
- 7.5. In the event that any provision of this Agreement conflicts with the law or if any such provision is held invalid by a competent authority, such provision will be deemed to be restated to reflect as nearly as possible the original intentions of the parties under the applicable law. The remainder of the Agreement will remain in full force.

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WorldVistA

Organization

By:

By:

Dated:

Dated:

Initials (Organization) _____

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Initials (WorldVistA) _____

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Appendix A

Registration Fee — Five hundred U.S. dollars (US \$500).

Contact for Organization — [Insert Contact Information]

Contact for WorldVistA — [Insert Contact Information]

Duration of Agreement — From [date] through [date]

End User (if different from Organization)

[name of organization]

[address of organization]

[contact(s)]

[phone number(s) for Contacts]

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Appendix B

1. Except as provided for below, Organization will submit to WorldVistA, for its prior review and written approval, all Publicity Materials. Rather than requiring submission and approval prior to every distribution of Publicity Materials, WorldVistA at its discretion may provide Organization with approval for a standard template for Organization to use when creating Publicity Materials. Organization acknowledges that any failure on its part to secure prior written approval from WorldVistA for Publicity Materials could materially affect certification for Software by CCHIT and materially affect WorldVistA and other organizations who have entered into similar agreements with WorldVistA.
2. WorldVistA will provide to Organization an electronic copy of the CCHIT Certified Product Certification Seal (“Seal”) and an electronic copy of the WorldVistA logo (“Logo”). Without prior written permission from WorldVistA, Organization is permitted to state in promotional materials such as advertising, product literature, and web pages, “WorldVistA EHR™/VOE 1.0 is a CCHITSM Certified product for CCHIT Ambulatory EHR 2006” and to display Seal in conjunction with said words. Other Publicity Materials such as news releases and announcements always require prior written permission from WorldVistA. Furthermore:
 - (a) Seal and Logo must be displayed in readable format and the overall depiction must be consistent with CCHIT’s and WorldVistA’s graphical images, typography and designated colors.
 - (b) Seal and Logo must not be reshaped, resized or manipulated in any way that alters their proportions or appearance.
 - (c) Seal may be printed in one-color or two-color formats. Regardless of printing process, every reasonable effort should be made to reproduce Seal in accordance with its PMS colors, PMS5425 and PMS5395.
 - (d) Logo may be printed in one-color or multi-color formats. Regardless of printing process, every reasonable effort should be made to reproduce Logo in accordance with its original colors.
 - (e) Neither Seal nor Logo must ever appear more prominently than the name of Organization. Neither a lay person nor a person knowledgeable about Software can be likely to inadvertently be led to believe that either Seal or Logo apply to software other than Software deployed or used in an Authorized Production Environment pursuant to this Agreement.
 - (f) No degree of acceptability, level of safety or protection can be implied in Organization’s promotional materials.

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- (g) Promotional materials may reference the CCHIT URL (www.cchit.org) and the WorldVistA URL (www.worldvista.org). Seal may be hyperlinked to the CCHIT URL and Logo may be hyperlinked to WorldVistA URL. Viewers may also be directed to the URLs with the phrase, “For more information, visit” followed by either or both URLs.
 - (h) The first reference of the term “CCHIT” within an item of promotional material should place the service mark symbol (SM) thus: CCHITSM. On the bottom of that page should be a footnote that states, “CCHITSM is a service mark of the Certification Commission for Healthcare Information Technology.”
 - (i) The first reference of the term “CCHIT Certified” within an item of promotional material should place the service mark symbol thus: CCHIT CertifiedSM. On the bottom of that page should be a footnote that states, “CCHIT CertifiedSM is a service mark of the Certification Commission for Healthcare Information Technology.”
 - (j) The first reference of the term “WorldVistA EHR” within an item of promotional material should place the unregistered trademark symbol (TM) thus: WorldVistA EHRTM. On the bottom of that page that page should be a footnote that states, “WorldVistA EHRTM is a trademark of WorldVistA.” WorldVistA has applied to the US Patent and Trademark Office for registration of its trademark, and upon granting of registration, WorldVistA will inform Organization, whereupon any said footnote on subsequently created items of Publicity Material should use the registered trademark symbol (®) thus: “WorldVistA EHR® is a registered trademark of WorldVistA.”
3. WorldVistA retains sole authority to approve any and all Publicity Materials, and WorldVistA’s decisions regarding such Publicity Materials are final and binding on Organization. While WorldVistA may need to approach other organizations such as CCHIT for approval of Publicity Materials, ultimately, it will be WorldVistA’s right and responsibility to determine the appropriateness of Publicity Material.

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Appendix C

Below are the rules for managing Software in the Authorized Production Environment and any Additional Authorized Production Environments.

1. Certification can be claimed only for Software obtained directly from WorldVistA or from a download site operated or approved by WorldVistA. Organization must not claim Certification either directly or indirectly by implication or omission of information, for any other software used in an Authorized Production Environment including, but not limited to, user interfaces, interfaces to other software, as well as other software used in conjunction with Software. Organization will exercise due diligence to ensure that neither a lay person nor a person knowledgeable about Software is likely to inadvertently be led to believe that Certification extends to software not obtained from WorldVistA or not used in an Authorized Production Environment pursuant to this Agreement. Organization may freely modify the Software. However, once modified, Organization may no longer refer to the Software as Certified.
2. When deploying or initially using Software in an Additional Authorized Production Environment, Organization may copy Software from an existing Authorized Production Environment. However, every Authorized Production Environment must be separately identifiable. In connection with the deployment or use of Software in an Authorized Production Environment, WorldVistA may provide software configuration modules to allow Authorized Production Environment and each Additional Authorized Production Environments to identify itself by name, and Organization must install such software configuration modules.
3. Only unaltered, unmodified Software deployed or used in an Authorized Production Environment pursuant to this Agreement may be referred to as Certified. However, the configuration of Software (whether through changes in data, changes in program source code or both) for details specific to Organization or for Authorized Production Environment (such as the names of care providers, customizing labels, creating or modifying reports) is not considered a modification for purposes of this provision.
4. WorldVistA retains the sole right to determine whether a change made to an Authorized Production Environment is a functional change to Software or a configuration change that does not alter functionality. If Organization seeks WorldVistA's opinion as to whether or not a change is a configuration change or whether it is a change in functionality, WorldVistA will provide a timely response to Organization. For clarity, such a response from WorldVistA may be a request for more information. Also for clarity, there is no specific time frame within which WorldVistA will reply since it will depend on the complexity of the change.
5. Organization must apply updates provided by and make modifications required by WorldVistA in a timely manner, and in any case within one calendar month of WorldVistA making such

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update or modification available, unless WorldVistA specifies a shorter time frame. For clarity, failure by Organization to install a required update or modification within the required time frame makes the Authorized Production Environment non-compliant, and triggers the requirements outlined in Section 3.5.

6. If Organization wishes to modify the Software, other than a configuration change, Organization must provide and, where appropriate, must license such modifications to WorldVistA. For any such change provided by Organization to WorldVistA:
 - (a) Organization shall inform WorldVistA as to whether any intellectual property claim, such as a patent, copyright or trademark, is made by Organization with respect to the modification, and if so, under what license the modification is provided to WorldVistA.
 - (b) WorldVistA retains the sole right to determine whether or not to incorporate any proposed modification into Software. If, for instance, WorldVistA determines that the licensing under which the modification is provided to WorldVistA is incompatible with the licensing under which WorldVistA makes Software available, WorldVistA may, at its sole discretion, choose not to incorporate the modification into Software. Further, WorldVistA may, at its sole discretion, reject any modification if such a modification would differ philosophically or technically with the Software, or if the quality of modification is inadequate.
 - (c) Organization agrees, at its sole expense, to indemnify WorldVistA from any claims, suits, liabilities, or proceedings made by any third parties with respect to the ownership of purported intellectual property rights in any modification to the Software made by Organization, including reasonable attorney's fees, costs, judgments, settlement amounts and related expenses. Such indemnification shall include, without limitation reasonable attorneys' fees, costs, judgments, settlement amounts and related expenses.
7. WorldVistA permits Organization to unilaterally make limited changes of a temporary nature to Software where Organization believes in good faith that such a change is urgently required to fix or work around a bona fide bug in the Software, or to address a security vulnerability. In the event Organization makes such a change:
 - (a) In Organization's good faith best technical judgment, the change must be the minimum necessary to respond to the bug or security vulnerability.
 - (b) Organization will notify WorldVistA technical Contact within one (1) business day of making a change to an Authorized Production Environment, providing details of the change.
 - (c) Organization will not make any claim of intellectual property ownership with respect to the change.

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- (d) Organization agrees, at its sole expense, to indemnify WorldVistA from any claims, suits, liabilities, or proceedings made by any third parties with respect to the ownership of purported intellectual property rights in any change to the Software made by Organization, including reasonable attorney's fees, costs, judgments, settlement amounts and related expenses. Such indemnification shall include, without limitation reasonable attorneys' fees, costs, judgments, settlement amounts and related expenses.
- (e) Having notified WorldVistA, Organization may continue to claim Certification, until WorldVistA makes a determination of the propriety of the change as described below.
- (f) Ultimately, WorldVistA retains the sole right to determine the appropriateness of the change. Such determination may include a determination of whether the bug or security vulnerability exists, whether the change is an appropriate response, whether Organization may continue to claim Certification for Software with the change, whether a different change is a more appropriate response, and/or whether other actions by Organization are needed to continue to claim Certification. Organization will cooperate with WorldVistA's efforts to make such determination.
- (g) Once WorldVistA makes a determination about the change, Organization will take action within ten (10) business days to comply with WorldVistA's determination, or will cease to claim Certification.