



Pharmacy Benefit Management Solution Contract

between

The Department of Medical Assistance Services

and

(Supplier Name)

**PHARMACY BENEFIT MANAGEMENT SOLUTION CONTRACT
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INFORMATION TECHNOLOGY SOLUTION CONTRACT

THIS Pharmacy Benefits Management Solution CONTRACT ("Contract") is entered into by and between the Virginia Department of Medical Assistance Services (DMAS), pursuant to §2.2-2012 of the Code of Virginia, and _____ ("Supplier"), a corporation headquartered at [address] to be effective as of _____, 2016 ("Effective Date").

1. PURPOSE AND SCOPE

This Contract sets forth the terms and conditions under which Supplier agrees to provide and implement for DMAS a Pharmacy Benefits Management Solution (PBMS) as described in Exhibit A, Requirements. If Supplier proposes a Supplier hosted solution, then Exhibit G – Application Service Provider - Additional Terms and Conditions shall apply and be incorporated into the governing contract.

2. DEFINITIONS

A. Acceptance

Successful delivery and performance by the Supplier of its contractual commitments at the location(s) designated in the Contract, including completed and successful Acceptance testing in conformance with the Requirements as determined by DMAS.

B. Agent

Any third party independent agent of DMAS.

C. Business Day/Hour

Normal operating hours for the Commonwealth of Virginia: Monday-Friday, 8 a.m.-5 p.m. Eastern Standard/Daylight Time, unless otherwise specified in the contract documents, excluding Commonwealth-designated holidays.

D. Center for Medicare and Medicaid Services (CMS)

CMS is the federal agency responsible for administering the Medicare, Medicaid, SCHIP (State Children's Health Insurance), HIPAA (Health Insurance Portability and Accountability Act), CLIA (Clinical Laboratory Improvement Amendments), and several other health-related programs. Additional information regarding CMS and its programs is available at <http://www.cms.hhs.gov/>.

E. Component

Software or Deliverable delivered by Supplier under this Contract.

F. Computer Virus

Any malicious code, program, or other internal component (e.g., computer virus, computer worm, computer time bomb, or similar component), which could damage, destroy, alter or disrupt any computer program, firmware, or hardware or which could, in any manner, reveal, damage, destroy, alter or disrupt any data or other information accessed through or processed by such software in any manner.

G. Confidential Information

Any confidential or proprietary information of a Party that is disclosed in any manner, including oral or written, graphic, machine readable or other tangible form, to any other Party in connection with or as a result of discussions related to this Contract and which at the time of disclosure either (i) is marked as being "Confidential" or "Proprietary"; (ii) is otherwise reasonably identifiable as the confidential or proprietary information of the disclosing Party; (iii) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information of the disclosing Party; (iv) is identifiable or should be reasonably considered as protected health information; or (v) any personally identifiable information, including information about DMAS' employees, contractors, and customers, that is protected by statute or other applicable law.

H. Deliverable

The tangible embodiment of the work performed or Services, Maintenance Services, Licensed Services, Solution, Component, Software, plans, reports, data, Product, Supplier Product and Updates provided by the Supplier in fulfilling its obligations under the Contract, including the development or creation of Work Product, if Work Product is authorized under the Contract.

I. Department of Medical Assistance Services

The Department of Medical Assistance Services (DMAS) is the Medicaid "single state agency" in Virginia tasked with the administration of the Title XIX Program and other state and locally funded health financing programs

J. Desktop Productivity Software

Commercial Off-The-Shelf software (COTS) general in nature, not broad enterprise applications, which can be purchased and used immediately "as is," without modification, in the same form in which it was sold in the commercial marketplace. Standard options are not considered modifications.

K. Documentation

Those materials (including user manuals, training materials, guides, product descriptions, technical manuals, product specifications, supporting materials and Updates) detailing the information and instructions needed in order to allow DMAS and its Agents to make productive use of the Application, Software, Solution, Component, Product, Service, Licensed Services or Deliverable, and to implement and develop self-sufficiency with regard to the Application, Software, Solution, Component, Product, Service, Licensed Services or Deliverable, provided by Supplier in fulfilling its obligations under the Contract.

L. Electronic Self-Help

Any use of electronic means to exercise Supplier's license termination rights, if allowable pursuant to the Contract, upon breach or cancellation, termination or expiration of this Contract.

M. Health Record

"Health record" means any written, printed or electronically recorded material maintained by a health care entity in the course of providing health services to an individual concerning the individual and the services provided. "Health record" also includes the substance of any communication made by an individual to a health care entity in confidence during or in connection with the provision of health services or information otherwise acquired by the health care entity about an individual in confidence and in connection with the provision of health services to the individual. (§ 32.1-127.1:03, Code of Virginia)

N. Maintenance Coverage Period (MCP)

The term during which Maintenance is to be provided for a unit of Software or Product.

O. Maintenance Level

The defined parameters of Maintenance Services, including the times during which and time-frames in which Supplier shall respond to a request for Maintenance Services. The available Maintenance Levels shall be as defined in Exhibit A hereto or as defined in any Statement of Work or order issued hereunder. The actual Maintenance Level for a unit of Software or Product shall be set forth in the executed order or Statement of Work for Maintenance of that Software or Product referencing this Contract.

P. Maintenance Services (or "Maintenance" or "Software Maintenance")

If authorized by the Contract, means those services, preventive and remedial, provided or performed by Supplier under the Contract or for an Authorized User in order to ensure continued operation of the Software or Product, including Software Updates. Maintenance Services shall include support services. Software Maintenance Services may include the development of Work Product, if so authorized in the Contract.

Q. Party

Supplier or DMAS.

R. Protected Health Information

Protected health information (PHI) means individually identifiable health information that is (i) transmitted in electronic media, (ii) maintained in electronic media, or (iii) transmitted or maintained in any other form or medium. Protected health information excludes individually identifiable health information in (i) education records covered by the Family Educational Rights and Privacy Act, as amended, (20 U.S.C. § 1232g); (ii) in records of any student who is 18 years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student and are not available to anyone other than persons providing such treatment, except that such records may be personally reviewed by a physician or other appropriate professional of the student's choice; (iii) in employment records held by a covered entity in its role as employer; and (iv) regarding a person who has been deceased for more than 50 years. (45 CFR 160.103)

S. Receipt

When DMAS has physically received or has unfettered access to any Deliverable at the correct "ship-to" location.

T. Requirements

The functional, performance, operational, compatibility, Acceptance testing criteria and other parameters and characteristics of the Product, Software, Solution, Component, Service(s), Application and Licensed Services and Deliverables, as authorized by the Contract and as set forth in Exhibit A and to any subsequent Statement of Work issued hereunder and such other parameters, characteristics, or performance standards that may be agreed upon in writing by the Parties.

U. Services

Any work performed or service provided by Supplier in fulfilling its obligations under the Contract including design, and development of software and modifications, software updates, solution, products, implementation, installation, maintenance, support, testing, training, or other provision authorized by the Contract scope. As permitted by the scope of the Contract, may include the discovery, creation, or development of Work Product, if any. If Work Product is authorized, refer to definition for Work Product For details about the work and services to be provided by Supplier under this Contract, see Exhibit A. This definition does not include Licensed Services.

V. Software

If Software is authorized under the Contract, means the programs and code provided by Supplier under the Contract as a component(s) of any Deliverable or Component of any Solution, and any subsequent modification of such programs and code, excluding Work Product. For COTS (boxed) software, means the programs and code, and any subsequent releases, provided by Supplier under this Contract as set forth in Exhibit B or as described on Supplier's US and International price lists in effect. For Software Maintenance contracts Software also includes the programs and code provided by Supplier under the Contact. .

W. Software Publisher

If Software is authorized under the Contract, means the licensor of the Software, other than Supplier, provided by Supplier under this Contract.

X. Solution

The Supplier's contractually committed technical approach for solving a technology business objective and associated Requirements as defined and authorized by the scope of the Contract.

Solution means all Supplier and Supplier's third-party providers' Components making up the Solution, including but not limited to Software, Product, configuration design, implementation, Supplier-developed interfaces, Services and Work Product.

Y. Supplier

Means the Supplier and any of its Affiliates (i.e., an entity that controls, is controlled by, or is under common control with Supplier).

Z. Update

As applicable, any update, modification or new release of the Software, System Software, Application, Documentation or Supplier Product that Supplier makes generally available to its customers at no additional cost. Software Updates include patches, fixes, upgrades, enhancements, improvements, or access mode, including without limitation additional capabilities to or otherwise improve the functionality, increase the speed, efficiency, or base operation of the Software.

AA. Virginia Information Technologies Agency (VITA)

Virginia Information Technologies Agency (VITA) is an agency of the Commonwealth of Virginia pursuant to Chapter 20.1 of Title 2.2 (§§2.2-2005 et seq.) of the Code of Virginia

BB. Work Product

Inventions, combinations, machines, methods, formulae, techniques, processes, improvements, software designs, computer programs, strategies, specific computer-related know-how, data and original works of authorship (collectively, the "Work Product") discovered, created, or developed by Supplier, or jointly by Supplier and DMAS in the performance of this Contract. Work Product shall not include configuration of software.

3. TERM AND TERMINATION

A. Contract Term

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, shall continue to be effective and legally binding with the Contract Term defined by a Design, Development and Implementation Phase (s) from the Effective Date through June 30, 2018 and an Operations and Maintenance Phase that begins on July 1, 2018 and ends June 30, 2023. DMAS, in its sole discretion, may extend this Contract with up to three (3) one-year option periods that would run from July 1 through June 30 for each period. DMAS will issue a modification to this Contract stating the extension period, not less than thirty (30) days prior to the expiration of any current term.

B. Termination for Convenience

DMAS may terminate this Contract, in whole or in part, upon not less than thirty (30) days prior written notice at any time for any reason.

C. Termination for Breach or Default

DMAS shall have the right to terminate this Contract, in whole or in part, for breach and/or default of Supplier. Supplier shall be deemed in breach and/or default in the event that Supplier fails to meet any material obligation set forth in this Contract.

If DMAS deems the Supplier to be in breach and/or default, DMAS shall provide Supplier with notice of breach and/or default and allow Supplier to cure the breach and/or default in a time period determined by DMAS. If Supplier fails to cure the breach as noted, DMAS may immediately terminate this Contract, in whole or in part. Any such termination shall be deemed a Termination for Breach or Termination for Default. In addition, if Supplier is found by a court of competent jurisdiction to be in violation of or to have violated 31 USC 1352 or if Supplier becomes a party excluded from Federal Procurement and Non-procurement Programs, DMAS may immediately terminate this Contract, in whole or in part, for breach, and DMAS shall provide

written notice to Supplier of such termination. Supplier shall provide prompt written notice to DMAS if Supplier is charged with violation of 31 USC 1352 or if federal debarment proceedings are instituted against Supplier.

D. Termination for Non-Appropriation of Funds

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

E. Termination Because of Financial Instability

If DMAS determines that there are verifiable indicators that the Supplier will become financially unstable to the point of threatening the ability of DMAS to obtain the Solution, Services or Licensed Services provided for under the Contract, DMAS will require verification of the Suppliers financial situation. If from the information DMAS determines the Supplier will inevitably become financially unstable, DMAS may terminate the Contract before this occurs. If the Supplier ceases to conduct business in the normal course, makes a general assignment for the benefit of creditors, or suffers or permits the appointment of a receiver for its business or assets, DMAS may, at its option, immediately terminate this Contract effective at the close of business on a date specified by DMAS. In the event that DMAS elects to terminate the Contract under this provision, the Supplier shall be notified in writing, by either certified or registered mail, specifying the date of termination. The Supplier shall submit a written waiver of the licensee's rights under the federal bankruptcy laws.

In the event of the filing of a petition in bankruptcy by a subcontractor, the Supplier shall immediately so advise DMAS. The Supplier shall ensure that all tasks that have been delegated to its subcontractor(s) are performed in accordance with the terms of this Contract.

F. Effect of Termination

Upon termination, neither the Commonwealth, nor DMAS, shall have any future liability except for Deliverables accepted by DMAS or Services, including as applicable, Licensed Services and Maintenance Services, rendered by Supplier and accepted by DMAS prior to the termination date.

In the event of a Termination for Breach or Termination for Default, Supplier shall accept return of any Deliverable that was not accepted by DMAS, and Supplier shall refund any monies paid by DMAS for such Deliverable, and all costs of de-installation and return of Deliverables shall be borne by Supplier.

G. Termination by Supplier

Termination by Supplier will not be considered.

H. Transition of Services

Prior to or upon expiration or termination of this Contract and at the request of DMAS, Supplier shall provide all assistance as DMAS may reasonably require to transition the Supplier's contractual obligations, or any portion thereof, as requested by DMAS to any other supplier with whom DMAS contracts for provision of same. This obligation may extend beyond expiration or termination of the Contract for a period not to exceed six (6) months. In the event of a termination for breach and/or default of Supplier, Supplier shall provide such assistance at no charge or fee to DMAS; otherwise, Supplier shall provide such assistance at the hourly rate or a charge agreed upon by Supplier and DMAS.

I. Contract Kick-Off Meeting

Within 30 days of Contract award, Supplier may be required to attend a contract orientation meeting, along with the DMAS contract manager/administrator, the DMAS and/or other agency project manager(s) or authorized representative(s), technical leads, DMAS representatives for SWaM , as applicable, and any other significant stakeholders who have a part in the successful performance of this Contract. The purpose of this meeting will be to review all contractual obligations for both parties, all administrative and reporting requirements, and to discuss any other relationship, responsibility, communication and performance criteria set forth in the Contract. The Supplier may be required to have its assigned account manager as specified in Exhibit A, Requirements, and a representative from its contracts department in attendance. The time and location of this meeting will be coordinated with Supplier and other meeting participants by the DMAS contract manager.

J. Contract Closeout

Prior to the contract's expiration date, Supplier may be provided contract close out documentation and shall complete, sign and return to DMAS Contract Administrator within 30 days of receipt. This documentation may include, but not be limited to: Patent/Royalty Certificate, Tangible Property/Asset Certificate, Escrow Certificate, SWaM Reports Completion Certificate, other required Small Business (SWaM) Procurement Plan compliance/variance and non-SWaM spend documentation as described in the Reporting section of this Contract, , and Final Payment Certificate. Supplier is required to process these as requested to ensure completion of close-out administration and to maintain a positive performance reputation with the Commonwealth of Virginia. Any closeout documentation not received within 30 days of Supplier's receipt of the Commonwealth's request will be documented in the contract file as Supplier non-compliance. Supplier's non-compliance may affect any pending payments due the Supplier, including final payment, until the documentation is returned.

4. SUPPLIER PERSONNEL

A. Selection and Management of Supplier Personnel

Supplier shall take such steps as may be necessary to ensure that all Supplier personnel performing under this Contract are competent and knowledgeable of the contractual arrangements between DMAS and Supplier. Supplier shall be solely responsible for the conduct of its employees, agents, and subcontractors, including all acts and omissions of such employees, agents, and subcontractors, and shall ensure that such employees and subcontractors comply with the DMAS site security, information security and personnel conduct rules, as well as applicable federal, state and local laws, including export regulations. DMAS reserves the right to require the immediate removal from DMAS' premises of any employee, subcontractor or agent of Supplier whom such DMAS believes has failed to comply with the above or whose conduct or behavior is unacceptable or unprofessional or results in a security or safety breach.

B. Supplier Personnel Supervision

Supplier acknowledges that Supplier or any of its agents, contractors, or subcontractors, is and shall be the employer of Supplier personnel, and shall have sole responsibility to supervise, counsel, discipline, review, evaluate, set the pay rates of, provide (to the extent required by law) health care and other benefits for, and terminate the employment of Supplier personnel. DMAS shall have no such responsibilities for Supplier or subcontractor personnel.

C. Key Personnel

The Supplier designates certain of Supplier's personnel as Key Personnel or Project Managers. Supplier's obligations with respect to Key Personnel and Project Managers shall be described in Exhibit A, Requirements. Failure of Supplier to perform in accordance with such obligations may be deemed a default of this Contract.

D. Subcontractors

Supplier shall not use subcontractors to perform its contractual obligations under the Contract unless specifically authorized in writing to do so by DMAS. If a part of this Contract is supported in whole or in part with federal funds, Supplier shall not subcontract to any subcontractor that is a party excluded from Federal Procurement and Non-procurement Programs. In no event shall Supplier subcontract to any subcontractor which is debarred by the Commonwealth of Virginia or which owes back taxes to the Commonwealth and has not made arrangements with the Commonwealth for payment of such back taxes.

If Supplier subcontracts the provision of any performance obligation under this Contract to any other party, Supplier will (i) act as prime contractor and shall be the sole point of contact with regard to all obligations under this Contract, and (ii) hereby represents and warrants that any authorized subcontractors shall perform in accordance with the warranties set forth in this Contract.

5. NEW TECHNOLOGY

A. Access to New Technology

Supplier will bring to DMAS' attention any new products or services within the scope of the Contract that it believes will be of interest to DMAS and will work to develop proposals for the provision of any such products or services as DMAS requests.

B. New Service Offerings Not Available from Supplier

If new or replacement product or service offerings become available to DMAS under the scope of the Contract, and cannot be competitively provided by the Supplier, DMAS may purchase such new or replacement products or services from a third party, and Supplier will reasonably assist DMAS to migrate to such products or services, if DMAS elects to use such new or replacement product or service offerings.

If DMAS elects to acquire new products or services as described in the above paragraph and such services replace existing Supplier-provided services, discount tiers and any commitments (as applicable per the Contract) will be reduced to reflect reductions in purchases of the replaced products or services.

6. SOFTWARE LICENSE

(DMAS will consider Supplier-provided language ONLY when Supplier is a reseller of the Software and the software publisher requires an End User License Agreement (EULA). In such case, Supplier is advised that DMAS will require an addendum to such EULA to address terms and conditions in such EULA with which DMAS, as a government entity, by law or by policy, cannot agree.)

DMAS is a state agency of the Commonwealth of Virginia, and therefore, any license purchased shall be held by the Commonwealth.

A. License Grant

(Option 1 -Software licensed by Supplier)

- i. Supplier grants to DMAS a fully paid, perpetual, worldwide, nonexclusive, transferable, irrevocable object code license to use, copy, modify, transmit and distribute the Software and Documentation including any subsequent revisions, in accordance with the terms and conditions set forth herein and subject only to the limitations and/or restrictions explicitly set forth in this Contract. It is expressly understood that "perpetual" license rights shall commence upon delivery of the Software to DMAS and shall exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the Contract. The Software is the property of Supplier, and no title or ownership of the Software or any of its parts, including Documentation, shall transfer to DMAS.

- ii. DMAS shall have the right to use, copy, modify, transmit and distribute the Software for their benefit, for government use and purposes, and for the benefit of their Agents, including internal and third-party information processing.
- iii. DMAS may allow access to the Software by third party vendors who are under contract with DMAS to provide services or by other entities as required for conducting the business of government. Access includes loading or executing the Software on behalf of DMAS or their Agents.
- iv. The license fee includes a test system copy, which consists of the right to use the Software for non-production test purposes, including but not limited to, problem/defect identification, remediation, and resolution, debugging, new version evaluation, Software interface testing, and disaster recovery technique analysis and implementation.
- v. In the event that all DMAS' copies of the Software, including all backup copies, are destroyed, irreparably damaged or otherwise lost due to fire, explosion, sabotage, flood or other disaster, Supplier shall provide to DMAS, at no additional cost, replacement copies of the Software and Documentation. Nothing contained in this Section shall obligate Supplier to replace or assist in the recovery of data lost concurrent with the loss of the Software.
- vi. DMAS may make a reasonable number of copies of the Software and Documentation for use in training, support, demonstrations, backup, archiving, disaster recovery and development, and may run the Software concurrently at a back-up site, for no additional license fees or costs. DMAS agrees that any copies of the Software or Documentation that it makes under this Contract shall bear all copyright, trademark and other proprietary notices included therein by Supplier. DMAS may add its own copyright or other proprietary notice, or copyright or other proprietary notice of DMAS, to any copy of the Software or Documentation, which contains modifications to which DMAS has ownership rights pursuant to this Contract.
- vii. Except as expressly authorized, DMAS shall not distribute the Software to any third party without Supplier's prior written consent.
- viii. Except as provided or allowed by law, no Party shall reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from any software or other intellectual property of any other Party.

[end Option 1]

[Option 2- Software licensed by Software Publisher] Any Software provided by Supplier as part of its Solution, that is licensed directly from the Software Publisher through an End User Licensing Agreement (EULA) shall be subject to the License Agreement Addendum (LAA) attached hereto as Exhibit D. Supplier shall have sole responsibility for ensuring that any such Software Publisher executes the LAA. The Software Publisher's EULA, along with the LAA executed by Software Publisher shall be added to Exhibit D for reference, but shall not become a part of this Contract.[end Option 2]

Nothing contained herein shall be construed to restrict or limit the rights of the DMAS to use any technical data, which DMAS may already possess or acquire under proper authorization from other sources.

B. License Type

All licenses granted, regardless of the type, include all uses set forth above. License type may vary by Software product and shall be set forth in Exhibit B and identified on any order issued pursuant to this Contract. [Note: The license types defined herein are examples and are not intended to limit the type of license offered by Supplier or requested by DMAS.]

[option C1 - Designated CPU License]

The license(s) granted under this Section authorizes use of the Software only on the number of CPU(s) listed in the applicable order or SOW. DMAS may transfer the Software to a different machine to the extent that the license price for such new CPU(s) is equivalent to the CPU(s) initially licensed. If the licensed CPU is inoperative because of (i) malfunction, (ii) performance of maintenance, or (iii) modification to the licensed CPU, or (iv) because the Software is being transferred to another CPU, such Authorized User may use the Software on a replacement CPU as long as required by the mentioned conditions.

[option C2 - Concurrent User License]

The license(s) granted under this Section authorizes use of the Software on any system based on the total number of Concurrent Users. The number of "Concurrent Users" is defined as the maximum number of concurrent Sessions connected at a given point in time. A "Session" is defined as an active user executing the Software. DMAS shall specify an initial number of Concurrent User licenses in its initial order pursuant to this Contract. DMAS may increase the number of Concurrent User licenses upon issuing an order or SOW for additional Concurrent User licenses. The license fee for additional Concurrent User licenses and payment of the license fee is set forth on Exhibit B.

[option C3 – Site License]

The license(s) granted under this Section authorizes use of the Software on any system located at the "Site" as such term is defined in the applicable order or SOW.

[option C4 – Project Specific License]

The Project Specific License authorizes use of the Software on any CPU; system owned or opted by the Commonwealth or DMAS, and by any user, without limitation as to quantity or location for the Medicaid Enterprise System Project.

[option C5 – Enterprise Wide License]

The Enterprise Wide License authorizes use of the Software on any CPU, on any system, and by any user within the "Enterprise", as such term is defined in the contract documents, without limitation as to the quantity or location or project.

C. No Subsequent, Unilateral Modification of Terms by Supplier ("Shrink Wrap")

Notwithstanding any other provision or other unilateral license terms which may be issued by Supplier after the Effective Date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order for a Solution, the components of which are licensed under this Contract, or the fact that such other agreement may be affixed to or accompany Software upon delivery ("shrink wrap"), the terms and conditions set forth herein shall supersede and govern licensing and delivery of all products and services hereunder.

7. RIGHTS TO WORK PRODUCT

DMAS is a state agency of the Commonwealth of Virginia, therefore, any license to pre-existing work shall be held by, and all rights in, title to, and ownership of Work Product shall vest with the Commonwealth. .

A. Work Product

DMAS and Supplier each acknowledge that performance of this Contract may result in Work Product. The Parties shall document all Work Product specifications and such specifications shall be made an incorporated exhibit to this Contract. Supplier agrees that it shall promptly and fully disclose to the Commonwealth or the DMAS any and all Work Product generated, conceived, reduced to practice or learned by Supplier or any of its employees, either solely or jointly with others, during the term or performance of this Contract, which in any way relates to the business of the Commonwealth or DMAS. Supplier further agrees that neither Supplier nor Supplier's employees, contractors, agents or subcontractors, nor any party claiming through Supplier or Supplier's employees, shall, other than in the performance of this Contract, make use

of or disclose to others any proprietary information relating to the Work Product. All Services performed hereunder shall include delivery of all source and object code and all executables and documentation for all Work Product. Supplier shall at no time deny access to the Work Product, regardless of form, by the Commonwealth or the DMAS.

B. Ownership

Supplier agrees that, whether or not the Services are considered “works made for hire” or an employment to invent, all Work Product discovered, created or developed under this Contract shall be and remain the sole property of the Commonwealth and its assignees. Except as specifically set forth in writing and signed by both DMAS and Supplier, Supplier agrees that the Commonwealth shall have all rights with respect to any Work Product discovered, created or developed under this Contract without regard to the origin of the Work Product. . In all instances, the Commonwealth of Virginia owns any software designed, developed, installed, or enhanced with 90 % Federal Financial Participation (FFP). CMS has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use and authorize others to use for federal government purposes, software, modifications to software, and documentation that is designed developed, installed or enhanced with 90% FFP.

If and to the extent that Supplier may, under applicable law, be entitled to claim any ownership interest in the Work Product, Supplier hereby irrevocably transfers, grants, conveys, assigns and relinquishes exclusively to the Commonwealth any and all right, title and interest it now has or may hereafter acquire in and to the Work Product under patent, copyright, trade secret and trademark law in perpetuity or for the longest period otherwise permitted by law. If any moral rights are created, Supplier waives such rights in the Work Product. Supplier further agrees as to the Work Product to assist the Commonwealth in every reasonable way to obtain and, from time to time, enforce patents, copyrights, trade secrets and other rights and protection relating to the Work Product, and to that end, Supplier and its employees shall execute all documents for use in applying for and obtaining such patents, copyrights, and other rights and protection, and in protecting trade secrets, with respect to such Work Product, as the Commonwealth may reasonably request, together with any assignments thereof to the Commonwealth or entities designated by the Commonwealth.

C. Pre-existing Work

If and to the extent that any pre-existing rights are embodied or reflected in the Work Product, Supplier hereby grants to the Commonwealth the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (i) use, execute, reproduce, display, perform, distribute copies of and prepare derivative works based upon such pre-existing rights and any derivative works thereof and (ii) authorize others to do any or all of the foregoing. It is expressly understood that “perpetual” license rights shall commence upon delivery of the Solution Deliverables and shall exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the Contract.

D. Return of Materials

Upon termination of this Contract, Supplier shall immediately return to DMAS all copies, in whatever form, of any and all Confidential Information, Work Product and other properties provided by DMAS, which are in Supplier's possession, custody or control.

8. GENERAL WARRANTY

Supplier warrants and represents to DMAS that Supplier will fulfill its contractual obligations and meet all needed requirements as described in Exhibit A as follows:

A. Ownership

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

B. Limited Warranty

During the warranty period of 12 Months after Acceptance, Supplier warrants that the Solution as authorized and provided by Supplier under this Contract, shall meet or exceed the Requirements. Supplier shall correct, at no additional cost to DMAS, all errors identified during the warranty period that result in supplier's failure to meet the Requirement or its contractual obligations.

C. Component Warranty

For any Software or Deliverable ("Component"), the applicable warranty period shall be the period from written acceptance of the Component until final acceptance of the Solution.

D. Interoperability Warranty

Supplier warrants that each Component, regardless of the origin of the Component, delivered under this Contract shall be interoperable with other Components so as to meet or exceed the performance specified in the Requirements.

E. Performance Warranty

Supplier warrants and represents the following with respect to Performance:

- i. All contractual obligations shall be performed with care, skill and diligence, consistent with or above applicable professional standards currently recognized in Supplier's profession, and Supplier shall be responsible for the professional quality, technical accuracy, completeness and coordination of all plans, information, specifications, Deliverables and Services furnished under this Contract;
- ii. All contractual obligations pursuant to the Request for Proposal ("RFP"), and any associated Deliverables shall be fit for the particular purposes specified by DMAS in the RFP and in this Contract, and Supplier is possessed of superior knowledge with respect to its contractual obligations and is aware that DMAS is relying on Supplier's skill and judgment in providing its contractual obligations;

F. Documentation and Deliverables

Supplier warrants the following as applicable to the Contract:

- i. The Solution or Software is pursuant to a particular Request for Proposal ("RFP") and therefore such Solution or Software shall be fit for the particular purposes specified by DMAS in the RFP and in this Contract. Further, Supplier is possessed of superior knowledge with respect to the Solution of Software and is aware that DMAS is relying on Supplier's skill and judgment in providing the Solution or Software;
- ii. If the RFP specified or if Exhibit A or Supplier's proposal specifies the hardware equipment DMAS shall use to run the Solution, then Supplier warrants the Solution, and any subsequent Solution Component Software release, is compatible with and shall perform well with such hardware equipment;
- iii. The Solution provided hereunder includes Component Software at the current release level unless DMAS specifies an older version in the contract documents;
- iv. No corrections, work arounds or future Software or Solution Component Software releases provided by Supplier under the warranty provisions or under maintenance shall degrade the Solution, cause any other warranty to be breached, or require DMAS to acquire additional hardware equipment or software;
- v. Supplier warrants that the Documentation and all modifications or amendments thereto which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow a user/programmer to understand fully the Solution or Solution Component or to load/use/operate the Software without reference to any other materials or information.

G. Malicious Code

Supplier has used its best efforts through quality assurance procedures to ensure that there are no Computer Viruses or undocumented features in any Solution, Solution Component, Deliverables, Product, Software, System Software, Update, Application and/or Licensed Service, as obligated and provided by Supplier at the time of delivery to DMAS. Supplier warrants that the Solution, Solution Components, Deliverables, Product, Software, System Software, Update, Application and/or Licensed Services, as obligated and provided by Supplier does not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any Authorized User's use of the Solution, Solution Components, Deliverables, Product, Software, System Software, Application and/or Licensed Service.

Notwithstanding any rights granted under this Contract or at law, Supplier hereby waives under any and all circumstances any right it may have or may hereafter have to exercise Electronic Self-Help. Supplier agrees that DMAS may pursue all remedies provided under law in the event of a breach or threatened breach of this Section, including injunctive or other equitable relief.

H. Open Source

Supplier will notify DMAS if the Solution, Solution Components, Deliverables, Product, Software, Updates, Application and/or Licensed Services, as obligated and provided by Supplier, contains any Open Source code and identify the specific Open Source License that applies to any embedded code dependent on Open Source code, provided by Supplier under this Contract.

I. Supplier's Viability

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

J. Supplier's Past Experience

Supplier warrants that it has met similar contractual obligations and fulfilled the Requirements as set forth in Exhibit A and in this Contract, in similar or greater complexity, to other customers without significant problems due to Supplier's performance and without causing a contractual breach or default claim by any customer.

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

9. DELIVERY AND INSTALLATION

A. Scheduling

Supplier shall deliver the Solution, including any Component parts, and complete performance of Services according to the delivery dates set forth in the Contract or as modified by any Contract Modification agreed to and executed by the parties.

Supplier shall make available all appropriate and/or related Documentation at the time of delivery of the relevant Component of the Solution. Any Solution Component delivered without the appropriate and required Documentation shall be considered "shipped short" until the applicable documentation has been received.

B. Deployment of Solution

1. Supplier Deployment of Solution

The Solution fee includes initial deployment of the complete Solution. Supplier is required to deploy the Solution in accordance with the deployment schedule set forth in the Contract. Deployment shall include the installation of any Software Component and, if agreed, any

hardware Component, of the Solution. Supplier shall conduct its standard appropriate diagnostic evaluation at the agreed upon site to determine that the Solution is properly deployed and fully ready for productive use, and shall supply DMAS with a copy of the results of the diagnostic evaluation promptly after completion of deployment.

Supplier agrees that failure to deploy the Solution in accordance with the delivery schedule in the applicable Contract shall constitute a material breach of this Contract resulting in damages to DMAS. As an estimate of the damages such DMAS shall suffer, Supplier agrees to credit DMAS an amount equal to one quarter of one percent of the total Solution fee, for each day after the scheduled deployment date that the Solution has not been deployed for a period of thirty (30) days following the agreed upon delivery date. If the delay lasts longer than thirty (30) days, DMAS may immediately cancel the Contract and collect damages for each day of that period of late delivery. DMAS reserves any and all other remedies available at law or in equity for delays lasting longer than thirty (30) days or for non-deployment.

2. DMAS Installation of Software

If the Solution includes Software which may be installed by DMAS and DMAS elects to install the Software itself, the Software shall be deemed to be installed when all programs, program libraries and user interfaces are copied to and initialized on the appropriate equipment as executable by having DMAS invoke the primary function of each major Component of the Software or when Acceptance criteria as specified in the Contract have been met. DMAS shall provide to Supplier written notice of Acceptance upon completion of installation and successful Acceptance testing. Supplier shall proceed with full deployment of the Solution concurrently with or after DMAS' installation of the Software, as agreed between DMAS and Supplier in the Contract

C. Documentation of Software Configuration

If the Solution includes configuration of Software by Supplier, Supplier shall provide to DMAS documentation containing a description of the configuration. Such documentation shall be sufficiently detailed such that any appropriately trained employee or Agent of DMAS may reconstruct the configuration of the Software.

10. ACCEPTANCE

A. Software and Deliverable Acceptance Criteria

Software and Deliverables shall be deemed accepted when DMAS determines that such Software and Deliverables successfully operate in accordance with the Contract Requirements and DMAS notifies Supplier in writing of its acceptance. At a minimum, Acceptance Criteria for Software and Deliverables, and for the Solution as a whole, shall ensure that all of the functionality described in the Requirements set forth in Exhibit A and required by DMAS has been delivered to DMAS. Acceptance of any one Deliverable shall not imply DMAS' concurrence that the Deliverable will function properly with or within the Solution. Supplier shall be responsible for ensuring that all Deliverables function properly within the Solution. Should a previously Accepted Deliverable require further modification in order to work properly with or within the Solution, Supplier shall be responsible for all costs associated with such modification.

DMAS agrees to commence Acceptance testing in accordance with the work plan and the DMAS approved Test Plan. Acceptance testing will be no longer than such longer period as may be agreed in writing between DMAS and Supplier, for the first instance of each product type set forth in Exhibit B. Supplier agrees to provide to DMAS such assistance and advice as DMAS may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses. Any such travel expenses must be pre-approved by DMAS at the then-current per diem amounts as published by the Virginia Department of Accounts (http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_Meals_Lodging_10200_8.pdf), or a successor URL(s)). DMAS shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing. Should DMAS fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) days following the Acceptance testing period, the Service shall be deemed Accepted.

B. Software and Deliverable Cure Period

Supplier shall correct any non-conformities identified during Acceptance testing and re-submit such non-conforming Software or Deliverable for re-testing within three (3) days of receipt of written notice of non-conformance, or as otherwise agreed between DMAS and Supplier. Should Supplier fail to cure the non-conformity or deliver Software or a Deliverable which meets the Requirements, DMAS may, in its sole discretion: (i) reject the Software or Deliverable in its entirety and recover amounts previously paid hereunder; (ii) issue a "partial Acceptance" of the Software or Deliverable with an equitable adjustment in the price to account for such deficiency; (iii) conditionally accept the applicable Software or Deliverable while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of the Software or a Deliverable to meet, in all material respects, the Requirements after the second set of acceptance tests shall constitute a default by Supplier. In the event of such default, DMAS may, at its sole discretion, terminate the Contract, in whole or in part, for the Solution to be provided thereunder by Supplier; or (iv) Supplier shall accept return of any Deliverables or Software provided to DMAS, and Supplier shall refund any monies paid by DMAS pursuant to the Contract, or portion thereof terminated, the Solution contemplated under the Contract being considered as a whole not as a sum of its parts. All costs of de-installation and return of product or Software shall be borne by Supplier. This remedy is in addition to and not in lieu of any other remedies of Agency set forth herein or available at law or in equity.

C. Solution Acceptance Criteria

Solution shall be deemed accepted when DMAS determines that such Solution successfully operates in accordance with the Contract Requirements. DMAS agrees to commence Acceptance testing in accordance with the work plan and the DMAS approved Test Plan or such longer period as may be agreed in writing between DMAS and Supplier, after deployment of the Solution. Supplier agrees to provide DMAS such assistance and advice as such DMAS may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses. Any such travel expenses must be pre-approved by DMAS and shall be reimbursable by DMAS at the then-current per diem amounts as published by the Virginia Department of Accounts http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_Meals_Lodging_10200_8.pdf, or a successor URL(s)). DMAS shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing Should DMAS fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) days following the Acceptance testing period, the Service shall be deemed Accepted.

D. Solution Cure Period

Supplier shall correct any non-conformities identified hereunder and shall thereafter re-submit such previously non-conforming Solution or Component products or Services for re-testing within fifteen (15) business days of receipt of written notice of non-conformance to Supplier, or as otherwise agreed between DMAS and Supplier. Should Supplier fail to deliver a Solution which meets the Requirements, DMAS may, in its sole discretion: (i) reject the Solution in its entirety and recover amounts previously paid hereunder; (ii) issue a "partial Acceptance" of the Solution with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Solution while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of the Solution to meet, in all material respects, the specifications and performance standards after the second set of acceptance tests shall constitute a default by Supplier. In the event of such default, DMAS may, at its sole discretion, terminate its order, in whole or in part, for the Solution to be provided hereunder by Supplier; or (iv) Supplier shall accept return of any products or Software provided to DMAS, and Supplier shall refund any monies paid by DMAS pursuant to the order, or portion thereof terminated, the Solution contemplated under the order being considered as a whole not as a sum of its parts. All costs of de-installation and return of product or Software shall be borne by Supplier. This remedy is in addition to and not in lieu of any other remedies of DMAS set forth herein or available at law or in equity.

11. WARRANTY AND MAINTENANCE SERVICES

At any time during the Warranty or Maintenance Period, as applicable, Supplier shall provide the following warranty or maintenance services (including unlimited telephonic support and all necessary travel and labor) to maintain the Solution in accordance with the Requirements. During the Warranty Period, such services shall be performed without additional charge to DMAS. During the Maintenance Period, charges shall be in accordance with this Section and Exhibit B.

A. Known Defects

Promptly notify DMAS in writing of any defects or malfunctions in the Solution or Documentation of which it learns from any source, correct any such defects or malfunctions or provide a work around until corrected, within three (3) days of Supplier's knowledge of such defect or malfunction and provide DMAS with corrected copies of same.

B. New Releases

Provide to DMAS no later than the first day of general release, copies of the Software and Documentation revised to reflect any enhancements, including all new releases, upgrades, and access modes, to the Software made by Supplier, including, without limitation, modifications to the Software which can increase the speed, efficiency or base of operation of the Software or add additional capabilities to or otherwise improve the functionality of the Software.

C. Coverage

Twenty-four (24) hours per day, seven (7) days a week, provide to DMAS all reasonably necessary telephone or written consultation requested by DMAS in connection with use, problems and operation of the Solution.

D. Service Levels

Respond to problems with the Solution identified by DMAS in no more than one (1) hour after notification. Resolve all problems according to the following:

- i) Priority 1 (system down) within six (6) hours;
- ii) Priority 2 (certain processing interrupted or malfunctioning but system able to process) within twenty four (24) hours;
- iii) Priority 3 (minor intermittent malfunctioning, system able to process data) within three (3) days.

The level of severity (e.g., 1, 2, 3), shall be defined by DMAS.

E. Software Evolution

Should Supplier or Software Publisher merge or splinter the Software previously provided to DMAS, such action on the part of Supplier or Software Publisher shall not in any way result in DMAS being charged additional license or support fees in order to receive enhancements, releases, upgrade or support for the Software.

If Supplier or Software Publisher reduces or replaces functionality contained in a licensed Software product and provides the same or substantially similar functionality as or within a separate or renamed Software product, then the Commonwealth or DMAS shall be entitled to license such Software product at no additional license or maintenance fee, and subject to the terms and conditions herein.

If Supplier or Software Publisher releases an option, future Software product or other release that has substantially the same functionality as the Software products provided under this Contract, and Software Publisher and/or Supplier ceases to provide maintenance for the older Software product, then Supplier shall offer the Commonwealth or DMAS the option to exchange licenses for such replacement Software product or function at no additional charge.

F. Escalation Procedures

[To be provided by Supplier.]

G. Remedies

If Supplier is unable to make the Solution or any Component thereof conform, in all material respects to the Contract, within thirty (30) days following notification by DMAS, Supplier shall, at DMAS' request, accept return of the tangible Solution Components, and (a) during the Warranty Period, return all monies paid by DMAS for the returned Solution Components and Documentation or (b) during any subsequent Maintenance Period, return all monies paid by DMAS for the returned Solution Components and Documentation, pro-rated using the straight-line method for an estimated Solution life cycle of seven (7) years. DMAS shall discontinue use of any Solution Component Software or product.

H. Solution Support Services (Maintenance) and Renewal Options

Sixty (60) days prior to the expiration of the Warranty Period, Supplier shall notify DMAS in writing of such expiration, and DMAS, at its sole discretion, may order from Supplier Solution support Services ("Maintenance Services"), including new Software releases, updates and upgrades, for a period of one (1) year ("Maintenance Period") and for an annual fee of ten percent (10%) of the Software license fee paid by DMAS for its then current installed base. Supplier shall notify DMAS sixty (60) days prior to the expiration of the Maintenance Period, and DMAS, at its sole discretion, may renew Maintenance Services for an additional one (1) year period. The annual fee for Maintenance Services shall not exceed the fee charged for the preceding year's Maintenance Services by more than three percent (3%), or the annual change in CPI, as defined in the Fees and Charges section, in effect at the time, whichever is less. Supplier warrants that it shall make Support Services available for all the Solution components listed in Exhibit B for a period of at least five (5) years from the expiration of the initial Warranty Period of any Solution provided to DMAS pursuant to this Contract. Cancellation of Maintenance Services by DMAS shall not affect this Contract or the grant of any license by Supplier.

12. FEES, ORDERING AND PAYMENT PROCEDURE

A. Fees and Charges

As consideration for the Solution and any additional products and Services provided hereunder, DMAS shall pay Supplier the fee(s) set forth on Exhibit B, which lists any and all fees and charges. The fees and any associated discounts shall be applicable throughout the term of this Contract; provided, however, that in the event the fees or discounts apply for any period less than the entire term, Supplier agrees that it shall not increase the fees more than once during any twelve (12) month period, commencing at the end of year one (1). No such increase shall exceed the lesser of three percent (3%) or the annual increase in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, Not Seasonally Adjusted, as published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/cpi/home.htm>), for the effective date of the increase compared with the same index one (1) year prior. Any such change in price shall be submitted in writing in accordance with the above and shall not become effective for sixty (60) days thereafter. Supplier agrees to offer price reductions to ensure compliance with the Competitive Pricing Section.

B. Reproduction Rights

If applicable to the Supplier's solution, at DMAS' request, Supplier shall provide DMAS with a reproducible diskette or CD. DMAS shall be responsible for making copies and distributing the Software as required. Within thirty (30) days of the end of each calendar-quarter, DMAS shall provide to Supplier a report of the net number of additional copies of the Software deployed during the quarter. Supplier shall invoice DMAS for the net number of new licenses reported as deployed.

C. Reimbursement of Expenses

For travel outside the Contract scope of work or as mutually agreed, DMAS shall pay, or reimburse Supplier, for all reasonable and actual travel-related expenses incurred by Supplier during the relevant period, including transportation, meals, lodging and incidental expenses, that have been authorized by DMAS in advance and which will be reimbursable by DMAS at the then-current per diem amounts as published by the Virginia Department of Accounts (<http://www.doa.virginia.gov/>, or a successor URL(s)). All reimbursed expenses will be billed to DMAS on a pass-through basis without any markup by Supplier. At DMAS' request, Supplier shall provide copies of receipts for all travel expenses over US\$30.00.

D. Change Orders

Any change to the Contract's original technical and functional Requirements or other contractual obligations must be described in a written change request. Any such change request shall be accompanied by a formal quote from the Supplier, based on the authorized fees in Exhibit B, Pricing Schedule. The change request shall include (a) a detailed description of each product or service proposed, including such product and services components, at the Exhibit B line item level, (b) the quantity of each such component, (c) the contract price, (d) any additional percentage discount offered, and (e) an extended price. Supplier's quote shall also include a proposal describing the approach Supplier plans to take in developing, implementing, and maintaining its offering. Either Party may issue a change request that will be subject to written approval of the other Party before it becomes part of this Contract as a formal modification to the Contract. In no event shall any change request or modification thereto require the Supplier to provide any products or services that are beyond the scope of this Contract as such scope is defined in Exhibit A hereto.

E. Ordering

Supplier is required to accept any order placed by DMAS through the eVA electronic procurement website portal (eVA Home Page). eVA is the Commonwealth of Virginia's e-procurement system. State agencies, as defined in §2.2-2006 of the Code of Virginia, shall order through eVA.

Notwithstanding the foregoing, Supplier shall not accept any order from DMAS if such order is to be funded, in whole or in part, by federal funds and if, at the time the order is placed, Supplier is not eligible to be the recipient of federal funds as may be noted on any of the Lists of Parties Excluded from Federal Procurement and Non-procurement Programs.

F. Invoice Procedures

Supplier shall remit each invoice via email to BCMInvoices@dmas.virginia.gov and the identified DMAS Contract Administrator promptly after all Solution, Solution component(s), or Services have been accepted and in accordance with the milestone payment schedule, if any, in the applicable order. Payment for Solution support Services shall be monthly in arrears unless otherwise stated herein, or in any order referencing this Contract. No invoice shall include any costs other than those identified in the executed order, which costs shall be in accordance with Exhibit B. Without limiting the foregoing, all shipping costs are the Supplier's responsibility except to the extent such charges are identified in Exhibit B, or as noted in any executed order referencing this Contract. The monthly invoicing from the Supplier must be itemized by type(s) of contractual services performed and in total. Invoices issued by the Supplier shall identify at a minimum:

- i). Solution, product/Solution component, or Service type, or project milestone, and description
- ii). Quantity, charge and extended pricing for each Solution and/or Service item or milestone
- iii). Applicable order date

- iv). This Contract number and any applicable order number
- v). Supplier's Federal Employer Identification Number (FEIN).

Any terms included on Supplier's invoice shall have no force or effect and will in no way bind DMAS.

G. Purchase Payment Terms

Supplier is responsible for the accuracy of its billing information. Supplier agrees not to issue invoices hereunder until items or milestones have met Acceptance criteria. Charges for Solutions, products/Solution components, or Services accepted more than ninety (90) days prior to receipt of a valid invoice may not be paid. Should Supplier repeatedly over bill DMAS, DMAS may assess a one percent (1%) charge for the amount over-billed for each month that such over-billing continues.

In the event any Deliverable is shipped without the applicable Documentation, payment shall not be due until the required Documentation is provided.

If there are any disputed items, DMAS shall pay all undisputed charges and promptly notify Supplier in writing of any disputed amount. Supplier shall thereupon review its records, and, if it does not concur with DMAS, provide DMAS with documentation to support the charge. If such charges remain in dispute, such dispute shall be resolved in accordance with the Dispute Resolution section of this Contract. In the absence of the Supplier's written evidence identifying the merit of the disputed amounts, DMAS may not pay the disputed amounts and may consider the matter concerning the specific identified amounts closed. All payment terms are net thirty (30) days after Acceptance.

13. STATUS MEETINGS

If requested by DMAS, the Account Team will be prepared to conduct weekly stewardship meetings with DMAS to provide a broad review of all services, projects and ongoing operations. Supplier should also be prepared to conduct semi-annual meetings/presentations to discuss new products and services and their potential benefit to DMAS.

14. STEERING COMMITTEE

In order to facilitate mutually beneficial contractual relationships with suppliers, DMAS has procedures for establishing a steering committee ("Steering Committee"), consisting of senior management personnel, including personnel involved in the contractual relationship, from DMAS and Supplier.

Roles of the Steering Committee include but are not be limited to a) identifying potential issues which may arise during the performance of a contract, b) discussing and assigning roles and responsibilities, c) establishing methods for quickly resolving potential disputes, d) setting rules for communication and decision making, e) monitoring and measuring the business relationship between the parties, and f) acting as a final decision board for escalated problems.

A meeting of the Steering Committee is intended to be a forum for brainstorming and sharing ideas, emphasizing respect, cooperation, and access, with the end goal of developing relationships to avoid conflict. A facilitator may, but is not required to, conduct a meeting of the Steering Committee.

A Steering Committee for this Contract will be formed at DMAS' option. Meetings may be held at any time during the Contract term, should DMAS, at its sole discretion, determine that a meeting(s) would be beneficial to the contractual relationship, and Supplier agrees to participate in such meeting(s). In addition, Supplier may at any time submit a written request to DMAS for a meeting of the Steering Committee, which DMAS will not unreasonably deny.

Supplier shall ensure the availability of the appropriate personnel to meet with the DMAS contract management team..

15. POLICIES AND PROCEDURES GUIDE

Within 60 days of the effective date of the Contract, Supplier will provide DMAS with a policy and procedures guide that describes how the Supplier and DMAS will work together and how performance, including Deliverables and Services, are to be delivered. The guide will provide process diagram details, working activities, interface points with DMAS and Supplier deliverables. Updated versions of the guide will be provided by Supplier to DMAS every 6 months during the term and any extensions of the Contract.

16. TRAINING AND DOCUMENTATION

A. Training

In addition to any online tutorial training Supplier may make available, Supplier's fee, unless expressly excluded, includes all costs for any and all training as agreed upon for the training of up to ten (10) DMAS trainers at DMAS' designated location on the use and operation of the Solution provided to DMAS, to allow full benefit of the applicable Deliverable to DMAS, including instruction in any necessary conversion, manipulation or movement of DMAS' data. Supplier shall provide personnel sufficiently experienced and qualified to conduct such training at a time and location mutually determined by DMAS. Available additional and optional training, and applicable pricing and discounts, are described in Exhibit B.

B. Documentation

Supplier shall deliver to DMAS two (2), or such number as agreed upon between the parties, complete hard copies or electronic media of Documentation applicable to Supplier's Deliverable provided to DMAS, as requested by DMAS. Should Supplier revise or replace the Documentation, or should Documentation be modified to reflect Updates, Supplier shall deliver to DMAS such updated or replacement Documentation, in the same quantity and media format as originally requested by DMAS, or as agreed upon between the parties. DMAS shall have the right, as part of any license grant, to make as many additional copies of the Documentation, in whole or in part, for its own use as required. This Documentation shall include, but not be limited to, overview descriptions of all major functions, detailed step-by-step installation and operating procedures for each screen and activity, and technical reference manuals. Such Documentation shall be revised to reflect any modifications, fixes or updates made by Supplier. DMAS shall have the right, as part of the license granted by Supplier, at its own discretion, to take all or portions of the Documentation, modify or completely customize it in support of the authorized use of the licensed application or software and may duplicate such Documentation and include it in DMAS document or platform. Agency shall continue to include Supplier's copyright notice.

17. DMASSELF-SUFFICIENCY

Prior to or at any time during Supplier's performance of the Contract, DMAS may require that Supplier provide to DMAS a detailed plan to develop DMAS self-sufficiency and to transition operation and management to DMAS, or its Agent, which Agent may be VITA, or an agent of VITA, or a third party provider under contract with DMAS. At DMAS' request for Supplier's Services issued hereunder, Supplier shall provide all assistance reasonably required by DMAS to develop DMAS' self-sufficiency in operating and managing the Solution, Software, Products and/or Services that Supplier provided to DMAS under the applicable Contract. During and/or after the transition period, DMAS may, at its sole discretion, elect to order or continue Maintenance Services from Supplier, if authorized under the scope of the Contract, for any of the Software or hardware Product, components or Solution Components delivered to DMAS by Supplier.

18. COMPETITIVE PRICING

Supplier warrants and agrees that each of the charges, economic or product terms or warranties granted pursuant to this Contract are comparable to or better than the equivalent charge, economic or product term or warranty being offered to any commercial or government customer of Supplier. If Supplier enters into any arrangements with another customer of Supplier to provide the products and services, available under this Contract, under more favorable prices, as the prices may be indicated

on Supplier's current U.S. and International price list or comparable document, then this Contract shall be deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and Supplier shall immediately notify DMAS of such change.

19. ESCROW AGREEMENT

NOTE: SUPPLIER MUST PROVIDE AN EXECUTED COPY OF THE ESCROW AGREEMENT PRIOR TO EXECUTION OF THIS CONTRACT Supplier shall maintain copies of all Software source code and related technical and user Documentation, in English, in an escrow account, and shall maintain with escrow agent the executed agreement attached hereto as Exhibit C (Escrow Agreement). DMAS acknowledges that, prior to the Effective Date of this Contract, Supplier delivered to DMAS and DMAS received a copy of the executed Escrow Agreement naming the Commonwealth of Virginia as a third party beneficiary. DMAS has reviewed Escrow Agreement to ensure that such Escrow Agreement does not impose upon the Commonwealth any requirements other than administrative responsibilities necessary for the operation of the Escrow Agreement. If events give rise to a need for the escrow agent to release escrowed materials to the Commonwealth, the Commonwealth's sole responsibility shall be to request the release of such materials from the escrow agent. Supplier agrees to notify DMAS in writing not less than thirty (30) calendar days prior to termination or any modification of Escrow Agreement Supplier warrants that the information and materials to be kept in escrow in a media safe environment for the benefit of the Commonwealth are specifically identified and listed in Attachment A to the Escrow Agreement and include the most current version used by all DMAS of:

- i. the source code for the Software and all future release versions,
- ii. identification of the development/support technology stack, including but not limited to, every software tool, driver, script, app, etc. with versions and details needed to develop, test, support all phases of the SDLC for all tiers of the Software as used in the DMAS solution or operating environment,
- iii. all Documentation related thereto as well as all necessary and available information, proprietary information must be in English,
- iv. technical Documentation must be in English and shall enable DMAS, or an Agent of DMAS or any Authorized User to create, maintain and/or enhance the Software without the aid of Supplier or any other person or reference to any other materials, maintenance tools (test programs and program specifications), or proprietary or third party system utilities (compiler and assembler descriptions); descriptions of the system/program generation; and descriptions of any Supplier tools required to enable DMAS and all Authorized Users to continue to use the Software, and
- v. all Documentation must be provided in unprotected MS Word and other commonly used formats that can be updated.

Supplier warrants that all items, including future versions, deposited in escrow for DMAS or an Authorized User shall be verified by the Escrow Agent within 30 days after deposit to validate the completeness, accuracy and functionality of the Supplier's escrow deposits. The verification process to be performed by the Escrow Agent for the original deposit and subsequent deposits shall be detailed in the Escrow Agreement and a detailed report of all tests of such verification shall be submitted in writing to DMAS or the Authorized User within 10 business days of completion. To perform such verification, Escrow Agent shall conduct a verification process that includes but is not be limited to:

- i. File List Test - To ensure the deposited items are catalogued and confirm they are readable and virus free, and if encrypted, that the Escrow Agent has the decryption keys on deposit.
- ii. Inventory and Analysis Test – To provide a complete audit and inventory of the deposit including analysis of deposited media to verify the presence of build instructions, to identify all of materials necessary to recreate the original development environment and to confirm the presence of all build instructions, file classification tables, database schema and listings.

- iii. Compile Test – To validate whether the development environment can be recreated from the deposited documentation and files; to identify third-party libraries, to recreate the Supplier's development environment; to compile source files and modules, to recreate executable code and to prepare a complete list of any hardware or software configurations.
- iv. Binary Comparison Test – To test the functionality of the complied deposit materials by comparing the files built in compile testing to the licensed, executable file running at DMAS' or Authorized User's site.
- v. Full Usability Test – To confirm the source code placed in escrow will be fully functional in the event of a release and to perform a relevant series of tests to ensure that replicated software runs properly in the required DMAS or Authorized User environment.
- vi. Final Operability Test – To perform a final demonstration of the functioning software.
- vii. Fault Remedy – To collaborate with Supplier on fixing any faults discovered during the testing, to obtain corrected escrow items and to re-perform any verification tests as necessary until all tests are successful, with written detailed reports to DMAS or the Authorized User.

Supplier warrants that the Escrow Agreement provides for, among other items, the release of the list of items on Attachment A of the Escrow Agreement upon the happening of certain events, including, but not limited to, Supplier's failure to carry out its support and maintenance obligations imposed by this Contract for a period of sixty (60) days, Supplier's breach or default under this Contract, Supplier's bankruptcy, Supplier's failure to continue to do business in the ordinary course. Supplier agrees to pay all expenses associated with establishing and maintaining the escrow account and the contents mentioned above.

Subject to the information and materials listed on Attachment A of the Escrow Agreement being released to the Commonwealth pursuant to the terms of the Escrow Agreement, Supplier hereby grants to the Commonwealth a royalty-free, perpetual, irrevocable license, that permits disclosure to a third party support-vendor of a complete and accurate copy of then-current source code for the Software licensed hereunder, along with all related documentation.

20. CONFIDENTIALITY

A. Treatment and Protection

Each Party shall (i) hold in strict confidence all Confidential Information of any other Party, (ii) use the Confidential Information solely to perform or to exercise its rights under this Contract, and (iii) not transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any third-party. However, DMAS may disclose the Confidential Information as delivered by Supplier to subcontractors, contractors or agents of DMAS that are bound by non-disclosure contracts with DMAS. Each Party shall take the same measures to protect against the disclosure or use of the Confidential Information as it takes to protect its own proprietary or confidential information (but in no event shall such measures be less than reasonable care).

B. Exclusions

The term "Confidential Information" shall not include information that is:

- i. in the public domain through no fault of the receiving Party or of any other person or entity that is similarly contractually or otherwise obligated;
- ii. obtained independently from a third-party without an obligation of confidentiality to the disclosing Party and without breach of this Contract;
- iii. developed independently by the receiving Party without reference to the Confidential Information of the other Party; or
- iv. required to be disclosed under The Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) or similar laws or pursuant to a court order.

C. Return or Destruction

Upon the termination or expiration of this Contract or upon the earlier request of DMAS, Supplier shall (i) at its own expense, (a) promptly return to DMAS all tangible Confidential Information (and all copies thereof except the record required by law) of DMAS, or (b) upon written request from DMAS, destroy such Confidential Information and provide DMAS with written certification of such destruction, and (ii) cease all further use of DMAS' Confidential Information, whether in tangible or intangible form.

DMAS shall retain and dispose of Supplier's Confidential Information in accordance with the Commonwealth of Virginia's records retention policies.

D. Confidentiality Statement

All Supplier personnel, contractors, agents, and subcontractors performing Services pursuant to this Contract shall be required to sign a confidentiality statement or non-disclosure agreement. Any violation of such statement or agreement shall be deemed a breach of this Contract and may result in termination of the Contract.

E. Business Associate Agreement (BAA)

The Contractor shall be required to enter into a DMAS-supplied Business Associate Agreement (BAA) with DMAS to comply with regulations concerning the safeguarding of protected health information (PHI) and electronic protected health information (ePHI) attached hereto as Exhibit F (BAA). The Contractor shall comply, and shall ensure that any and all subcontractors comply, with all State and Federal laws and regulations with regards to handling, processing, or using the Department's PHI and ePHI. This includes but is not limited to 45 C.F.R. Parts 160 and 164 Modification to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules; Final Rule, January 25, 2013 and related regulations as they pertain to this agreement. This also includes the requirements in Virginia Code § 32.1-325.3, DMAS regulations, and federal Medicaid requirements regarding safeguarding information of applicants and recipients as set forth in 42 C.F.R. 431, Subpart F.

The Contractor shall keep abreast of any future changes to the regulations. The Contractor shall comply with all current and future HIPAA regulations and other applicable state and federal requirements at no additional cost to DMAS, and agrees to comply with all terms set out in the DMAS BAA, including any future changes to the DMAS BAA. The current DMAS BAA template is available on the DMAS website at http://www.dmas.virginia.gov/Content_pgs/rfp.aspx

21. INDEMNIFICATION AND LIABILITY

A. Indemnification

Supplier agrees to indemnify, defend and hold harmless the Commonwealth, DMAS, their officers, directors, agents and employees (collectively, "Commonwealth's Indemnified Parties") from and against any and all losses, damages, claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, assessments, fines, penalties (whether criminal or civil), judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Commonwealth's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) any act or omission of any employee, agent, or subcontractor of Supplier, (iii) breach of any representation, warranty or covenant of Supplier contained herein, (iv) any defect in the Supplier-provided products or services, or (v) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Supplier-provided products or services. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance

with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases involving the Commonwealth or state agencies, the selection and approval of counsel and approval of any settlement shall be satisfactory to the Commonwealth. In the event that a Claim is commenced against any of Commonwealth's Indemnified Parties alleging that use of the Supplier-provided products or services, including any components thereof, or that the Supplier's performance or delivery of any product or service under this Contract infringes any third party's intellectual property rights and Supplier is of the opinion that the allegations in such Claim in whole or in part are not covered by this indemnification provision, Supplier shall immediately notify DMAS in writing, via certified mail, specifying to what extent Supplier believes it is obligated to defend and indemnify under the terms and conditions of this Contract. Supplier shall in such event protect the interests of the Commonwealth's Indemnified Parties and secure a continuance to permit DMAS to appear and defend their interests in cooperation with Supplier as is appropriate, including any jurisdictional defenses DMAS may have.

In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Supplier-provided Deliverables, Products, Software, Services, Solution, including Solution Components, Application and Licensed Services, as applicable, or Supplier's performance, and in addition to all other obligations of Supplier in this Section, Supplier shall at its expense, either (a) procure for DMAS the right to continue use of such infringing Deliverables, Products, Software, Services, Solution, including Solution Components, Application and Licensed Services, as applicable, or any component thereof; or (b) replace or modify such infringing Deliverables, Products, Software, Services, Solution, including Solution Components, Application and Licensed Services, as applicable, or any component thereof, with non-infringing Deliverables, Products, Software, Services, Solution or Solution Component(s), Application and Licensed Services, as applicable, satisfactory to DMAS. And in addition, Supplier shall provide DMAS with a comparable temporary replacement products and/or services or reimburse DMAS for the reasonable costs incurred by DMAS in obtaining an alternative product or service, in the event DMAS cannot use the affected Deliverable, Product, Software, Services, Solution or Solution Component(s), Application and Licensed Services, as applicable, or any component thereof. If Supplier cannot accomplish any of the foregoing within a reasonable time and at commercially reasonable rates, then Supplier shall accept the return of the infringing Deliverables, Products, Software, Services, Solution, Solution Component, Application and Licensed Services, as applicable, or any component thereof, along with any other components rendered unusable by DMAS as a result of the infringing component, and refund the price paid to Supplier for such components.

B. Liability

Except for liability with respect to (i) any intentional or willful misconduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) any act or omission of any employee, agent, or subcontractor of Supplier, (iii) claims for bodily injury, including death, and real and tangible property damage, (iv) Supplier's indemnification obligations, (v) Supplier's confidentiality obligations, (vi) Supplier's security compliance obligations, and (vii) Supplier's data privacy and security obligations as specified under this Contract, Supplier's liability shall be limited to twice the aggregate value of the delivered and accepted Deliverables, Products, Software, Services, Solution, including Solution Components, Application and Licensed Services, as applicable, provided by Supplier to DMAS under this Contract. Supplier agrees that it is fully responsible for all acts and omissions of its employees, agents, and subcontractors, including their gross negligence or willful misconduct. The limitation shall apply on a per-incident basis, it being understood that multiple losses stemming from the same root cause constitute a single incident.

FOR ALL OTHER CONTRACTUAL CLAIMS, IN NO EVENT WILL ANY PARTY BE LIABLE TO ANY OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFIT, INCOME OR SAVINGS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, EXCEPT WHEN SUCH DAMAGES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS.

22. INSURANCE

In addition to the insurance coverage required by law as referenced in the Incorporated Contractual Provisions section of this Contract, Supplier shall carry:

Errors and omissions insurance coverage in the amount of \$5,000,000 per occurrence.

23. PERFORMANCE BOND

The Supplier shall deliver to the DMAS Contracts Management office an executed performance bond, in a form acceptable to DMAS with DMAS as obligee. The surety shall be a surety company or companies approved by the State Corporation Commission to transact business in the Commonwealth of Virginia. The successful Supplier shall obtain the required performance bond in form and substance acceptable to the Commonwealth and provide it to the Commonwealth no later than 7 days after the Contract Effective date detailed in the Contract. The successful Supplier must meet this performance bond requirement by providing the Commonwealth (as required) a performance bond covering the entire Contract period including all options to extend the Contract. The performance bond includes the Design, Development and Implementation (DDI)/Start-up period of the Contract (ending June 30th 2018) for the amount equal to 10% of the DDI fee (Implementation price), and, thereafter, a new annual (or re-issued) performance bond equal to 10% of the annual estimated contract amount covering each subsequent annual period of the Operations and Maintenance Phase of the Contract. The Supplier must provide annual (or re-issued) performance bonds to the Commonwealth no later than June 30th preceding the annual covered period beginning on July 1st of each year of the Operations Phase. Failure to provide to the Commonwealth the performance bond equal to 10% of the annual estimated contract amount as required prior to the Contract Effective date and, as applicable in the case of an annual performance bond, no later than June 30th preceding each annual covered period beginning on July 1st each year of the Operations Phase, shall result in DMAS' option to terminate the Contract. The successful Supplier shall make all necessary arrangements for the performance bond prior to the Contract Effective date and prior to any subsequent performance bond deadlines in the case of an annual performance bond. The Commonwealth will not assist the Supplier securing the services of any fidelity or guaranty underwriter. Failure to adhere to the requirements of this Contract shall result in DMAS' option to terminate the Contract as a material breach of the Contract.

24. SECURITY COMPLIANCE

Supplier agrees to comply with all provisions of the then-current Commonwealth of Virginia security procedures, published by the Virginia Information Technologies Agency (VITA) and which may be found at: (<https://vita.virginia.gov/default.aspx?id=537>) or a successor URL(s), as are pertinent to Supplier's operation. Supplier further agrees to comply with all provisions of DMAS' then-current security procedures as are pertinent to Supplier's operation and which have been supplied to Supplier by DMAS. Supplier shall also comply with all applicable federal, state and local laws and regulations. Supplier may, at any time, be required to execute and complete, for each individual Supplier employee or agent, additional forms which may include non-disclosure agreements to be signed by Supplier's employees or agents acknowledging that all DMAS information with which such employees and agents come into contact while at the DMAS site is confidential and proprietary. Any unauthorized release of proprietary or Personal information by the Supplier or an employee or agent of Supplier shall constitute a breach of its obligations under this Section and the Contract. Supplier shall immediately notify DMAS, if applicable, of any Breach of Unencrypted and Unredacted Personal Information, as those terms are defined in Virginia Code 18.2-186.6, and other personal identifying information, such as insurance data or date of birth, provided by DMAS to Supplier. Supplier shall provide DMAS 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. Supplier shall indemnify, defend, and hold the Commonwealth, DMAS, their officers, directors, employees and agents

harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable expenses suffered by, accrued against, or charged to or recoverable from the Commonwealth, DMAS, their officers, directors, agents or employees, on account of the failure of Supplier to perform its obligations pursuant this Section.

DMAS shall have the right to review Supplier's information security program prior to the commencement of Licensed Services and from time to time during the term of this Agreement. During the performance of the Licensed Services, on an ongoing basis from time to time, DMAS, at its own expense, shall be entitled to perform, or to have performed, an on-site audit of Supplier's information security program. In lieu of an on-site audit, upon request by DMAS, Supplier agrees to complete, within forty-five (45 days) of receipt, an audit questionnaire provided by DMAS regarding Supplier's information security program. Supplier shall implement any reasonably required safeguards as identified by any program audit.

25. IMPORT/EXPORT

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

26. BANKRUPTCY

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

27. GENERAL PROVISIONS

A. Relationship Between DMAS and Supplier

Supplier has no authority to contract for DMAS or in any way to bind, to commit DMAS to any agreement of any kind, or to assume any liabilities of any nature in the name of or on behalf of DMAS. Under no circumstances shall Supplier, or any of its employees, hold itself out as or be considered an agent or an employee of DMAS, and DMAS shall have no duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or its employees. Supplier represents and warrants that it is an independent contractor for purposes of federal, state and local employment taxes and agrees that DMAS is not responsible to collect or withhold any federal, state or local employment taxes, including, but not limited to, income tax withholding and social security contributions, for Supplier. Any and all taxes, interest or penalties, (including, but not limited to, any federal, state or local withholding or employment taxes, and any penalties related to health care or employee benefits laws) that are imposed, assessed or levied as a result of this Contract or Services performed pursuant to this Contract shall be paid or withheld by Supplier or, if assessed against and paid by DMAS, shall be reimbursed by Supplier upon demand by DMAS.

B. Incorporated Contractual Provisions

The then-current contractual provisions at the following URL are mandatory contractual provisions, required by law or by DMAS, and that are hereby incorporated by reference:

http://www.vita.virginia.gov/uploadedfiles/VITA_Main_Public/scm/StatutorilyMandatedTsandCs.pdf

The contractual claims provision §2.2-4363 of the Code of Virginia and the required eVA provisions at http://www.vita.virginia.gov/uploadedfiles/VITA_Main_Public/scm/eVATsandCs.pdf are also incorporated by reference.

The then-current terms and conditions in documents posted to the aforementioned URLs are subject to change pursuant to action by the legislature of the Commonwealth of Virginia, change in DMAS policy, or the adoption of revised eVA business requirements. If a change is made to the terms and conditions, a new effective date will be noted in the document title. Supplier is advised to check the URLs periodically.

C. Compliance with the Federal Lobbying Act

Supplier's signed certification of compliance with 31 USC 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder (together, the "Lobbying Act") is incorporated as an Exhibit E to this Contract.

D. Governing Law

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to that body of law controlling choice of law. Any and all litigation shall be brought in the circuit courts of the Commonwealth of Virginia. The English language version of this Contract prevails when interpreting this Contract. The United Nations Convention on Contracts for the International Sale of Goods and all other laws and international treaties or conventions relating to the sale of goods are expressly disclaimed. UCITA shall apply to this Contract only to the extent required by §59.1-501.15 of the Code of Virginia.

E. Dispute Resolution

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

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

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

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

F. Advertising and Use of Proprietary Marks

Supplier shall not use the name of DMAS or refer to DMAS, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of DMAS. In no event may Supplier use a proprietary mark of DMAS without receiving the prior written consent of DMAS.

G. Notices

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

i. To DMAS and to Supplier, if Supplier is incorporated in the Commonwealth of Virginia, to the addresses shown on the signature page.

ii. To Supplier, if Supplier is incorporated outside the Commonwealth of Virginia, to the Registered Agent registered with the Virginia State Corporation Commission.

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

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

H. No Waiver

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

I. Assignment

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

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

J. Captions

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

K. Severability

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

L. Survival

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

M. Force Majeure

No Party shall be responsible for failure to meet its obligations under this Contract if the failure arises from causes beyond the control and without the fault or negligence of the non-performing Party. If any performance date under this Contract is postponed or extended pursuant to this section for longer than thirty (30) calendar days, DMAS, by written notice given during the postponement or extension, may terminate Supplier's right to render further performance after the effective date of termination without liability for that termination.,

N. Remedies

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

O. Right to Audit

In addition to the requirements outlined below, the Supplier must comply, and must require compliance by its subcontractors with the security and confidentiality of records standards.

1) Access to Records - DMAS, the Centers for Medicare and Medicaid Services, state and federal auditors, or any of their duly authorized representatives shall have access to any books, annual reports, management's report on internal control over financial reporting, SAS 70 audit reports, fee schedules, documents, papers, and records of the Supplier and any of its subcontractors. Access to records includes any records that are stored offsite.

DMAS, the Centers for Medicare and Medicaid Services, state and federal auditors, or any of their duly authorized representatives, shall be allowed to inspect, copy, and audit any of the above documents, including, medical and/or financial records of the Supplier and its subcontractors.

2) Retention of Records - The Supplier shall retain all records and reports relating to this Contract for a period of six (6) years after final payment is made under this Contract or in the event that this Contract is renewed six (6) years after the final payment. When an audit, litigation, or other action involving or requiring access to records is initiated prior to the end of said period, however, records shall be maintained for a period of six (6) years following resolution of such action or longer if such action is still ongoing. Copies on microfilm or other appropriate media of the documents contemplated herein may be substituted for the originals provided that the microfilming or other duplicating procedures are reliable and are supported by an effective retrieval system which meets legal requirements to support litigation, and to be admissible into evidence in any court of law.

The Supplier shall not have the right to audit, or require to have audited, DMAS.

P. Offers of Employment

During the first twelve (12) months of the Contract, should Supplier hire an employee of DMAS who has substantially worked on any project covered by this Contract without prior written consent, the Supplier shall be billed for fifty percent (50%) of the employee's annual salary in effect at the time of termination.

Q. Contract Administration

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

R. Access to Premises

The Supplier shall allow duly authorized agents or representatives of the state or federal government, during normal business hours, access to Supplier's and subcontractors' premises, to inspect, audit, monitor or otherwise evaluate the performance of the Suppliers and subcontractor's contractual activities and shall forthwith produce all records requested as part of

such review or audit. In the event right of access is requested under this section, the Supplier and subcontractor shall, upon request, provide and make available staff to assist in the audit or inspection effort, and provide adequate space on the premises to reasonably accommodate the state or federal personnel conducting the audit or inspection effort. All inspections or audits shall be conducted in a manner as will not unduly interfere with the performance of Supplier or subcontractor's activities. The Supplier shall be given thirty (30) calendar days to respond to any preliminary findings of an audit before DMAS shall finalize its findings. All information so obtained will be accorded confidential treatment as provided under applicable law.

DMAS, the Office of the Attorney General of the Commonwealth of Virginia, the federal Department of Health and Human Services, and/or their duly authorized representatives shall be allowed access to evaluate through inspection or other means, the quality, appropriateness, and timeliness of all Supplier contractual obligations and performance under this Contract.

S. Entire Contract

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

- i). Exhibit A – Requirements;
- ii). Exhibit B – Solution Options List; Fees, Service Charges, and Payment Schedule;
- iii). Exhibit C - Escrow Agreement;
- iv). Exhibit D - End User Licensing Agreement (for reference only);
- v). Exhibit E - Certification Regarding Lobbying;
- vi). Exhibit F – DMAS Business Associate Agreement (BAA).
- vii) Exhibit G – Application Service Provider - Additional Terms and Conditions

This Contract, its Exhibits, and any prior non-disclosure agreement constitute the entire agreement between DMAS and Supplier and supersede any and all previous representations, understandings, discussions or agreements between DMAS and Supplier as to the subject matter hereof. Any and all terms and conditions contained in, incorporated into, or referenced by the Supplier's Proposal shall be deemed invalid. The provisions of the Virginia Department of General Services, Division of Purchases and Supply Vendor's Manual shall not apply to this Contract or any order issued hereunder. This Contract may only be amended by an instrument in writing signed by DMAS and Supplier. In the event of a conflict, the following order of precedence shall apply: this Contract, Exhibit G, Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit F and Exhibit E.

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

Executed as of the last date set forth below by the undersigned authorized representatives of DMAS and Supplier.

DMAS

SUPPLIER

By: _____

By: _____

(Signature)

Name: _____

(Print)

Title: _____

Date: _____

Address for Notice:

Attention: Supplier Contact

(Signature)

Name: _____

(Print)

Title: _____

Date: _____

Address for Notice:

Attention: Contract Administrator