External Quality Review Organization Solution and Cloud Services Contract

between

DMAS

and

Supplier

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1.

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Note on WW: COTS products and Software as a Service (SaaS) solutions are designed developed and licensed by the vendor, and the Commonwealth in not entitled to ownership rights to the core program, unless otherwise specified in the Contract

documents. When CMS enhanced match funding is used for COTS configuration or customization, those elements become subject to the existing regulation at 42 CFR § 495.360 regarding state and federal ownership and royalty-free licensing. The requirement for a royalty-free, non-exclusive, and irrevocable license to software referenced in that regulation applies only to software related to the customization and configuration of a COTS products for Commonwealth use (Work Product as described above) and does not apply to the core product. The Commonwealth, and other states, could freely share and re(use) the resulting COTS software configuration and customization (Work Product(subject to the licensing of the core COTS software products. 5

EXTERNAL QUALITY REVIEW ORGANZATION SOLUTION AND CLOUD SERVICES CONTRACT

THIS EXTERNAL QUALITY REVIEW ORGANZATION Solution and Cloud Services CONTRACT ("**Contract**") is entered into by and between The Department of Medical Assistance Services ("**DMAS**"), pursuant to § 2.2-2012 of the *Code of Virginia*, and SUPPLIER ("**Supplier**"), a _____ headquartered at ADDRESS, City, State, Zip Code, to be effective as of Contract Award Date ("**Effective Date**").

1. **PURPOSE AND SCOPE**

    The Department of Medical Assistance Services (DMAS) is the single state agency in the Commonwealth of Virginia that administers the Medicaid and Children's Health Insurance Program Programs in Virginia.

    The External Quality Review Organization (EQRO) shall be responsible for evaluating the access, quality, appropriateness, timeliness, and satisfaction with services provided to Medicaid and FAMIS recipients in Virginia. The Contractual Agreement will allow DMAS to meet the Centers for Medicare & Medicaid Services' (CMS) requirements for EQR and to monitor and help improve the care received through Virginia's Medicaid and FAMIS programs.

    This Contract sets forth the terms and conditions under which Supplier shall provide External Quality Review Organization Services/Solution. Supplier shall provide these products and services to DMAS, as defined below.

2. **DEFINITIONS**
    Capitalized terms used in this Contract have the meaning as provided (i) where each term is used in the Contract unless the term is (ii) set forth in this "Definitions" section below which lists the capitalized terms used in this Contract and provides a definition for the term.

    A. **ACCEPTANCE**
    The written acknowledgement by DMAS of successful delivery and performance by the Supplier of its contractual commitments at the location(s) designated in Contract documents, including completed and successful acceptance testing in conformance with the Requirements as determined by DMAS and set forth in the Contract documents..

    B. **APPLICATION**
    The software programs in object code and other related data, including intellectual data, proprietary information and Documentation contained and applicable to Licensed Services hosted and supported by Supplier under the Contract, as described in Exhibit A, including any Updates, enhancements, and replacements to the Application.

    C. **APPLICATION USER**
    Application User(s) include employees of DMAS, independent contractors engaged by DMAS, or entities contracting with DMAS for services, as specified in the Contract documents. Application User(s) also include customers, suppliers, members of the general public, and other entities with whom DMAS may find it necessary or desirable to process or communicate electronically in pursuit of its business.

    D. **CONTENT**
    Any data, including the selection, arrangement and organization of such data, entered, uploaded to the Application, or otherwise provided to Supplier by DMAS or by any Application User; and any software and related documentation, from whatever source, provided by DMAS or Application User to Supplier in connection with this Contract.

    E. **CLAIM**
    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. Collectively, "Claims".

    F. **CODE**

The Code of Virginia, as in effect and amended from time-to-time.

G. COMMERCIAL OFF-THE-SHELF ("COTS") SOFTWARE
Software that is 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.

H. COMMONWEALTH
The Commonwealth of Virginia.

I. COMMONWEALTH INDEMNIFIED PARTIES
The Commonwealth and DMAS, together with their respective officers, directors, agents, and employees.

J. COMPONENT
Any part or service of the Solution, Software, or Deliverable delivered by Supplier under this Contract.

K. COMPUTER VIRUS
Any malicious code, program, malware, 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.

L. CONCURRENT USERS
The maximum number of concurrent active users utilizing the Software at a given point in time.

M. CONFIDENTIAL INFORMATION
Non-public proprietary or trade secret information of DMAS and Supplier, whether the information is in written, graphic, machine readable or other tangible form, and which at the time of disclosure to any other Party is (i) marked as being "Confidential" or "Proprietary"; (ii) Health Records; (iii) Personally Identifiable Information, including information about DMAS' employees, contractors, and customers, or Sensitive Data, including PHI; or (iv) information that is protected by statute or other applicable law. In the case of DMAS, "Confidential Information" also includes any (a) information to which the Supplier has access in DMAS facilities or DMAS' systems, (b) Work Product and information pertaining to the Work Product, (c) DMAS data, DMAS software, and systems access codes, (d) information concerning DMAS' operations, plans, employees, contractors or third party suppliers, and (e) any information that is identifiable or should be reasonably considered as Personally Identifiable Information (PII) or Protected Health Information (PHI).

The term "Confidential Information" does 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.

N. CONTRACT
This agreement, including all exhibits, schedules, and attachments, including any modifications or amendments thereto, entered into by DMAS and Supplier.

O. CONTRACTOR
The use of the term "Contractor" in any of the following terms, conditions, links, or IRS Publication 1075 means the same as the term "Supplier" as defined and used in this Contract.

P. DELIVERABLE
Software, Documentation, Components, plans, reports, data, Work Product, and any other materials, items or events, in each case described or itemized as something that is developed,

prepared or created and delivered or required to be developed, prepared or created and delivered or made available to DMAS as part of the Services, Maintenance Services, Licensed Services, Application, Solution, Product, Software, System Software, Supplier Product, or Updates, including the development or creation of Work Product.

Q. DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (DMAS)

The Department of Medical Assistance Services, herein after referred to as the "Department" or "DMAS" is the single state agency in the Commonwealth of Virginia that administers the Medicaid Program authorized under Title XIX of the Social Security Act and the Virginia Children's Health Insurance Program, known as FAMIS, under Title XXI of the Social Security Act for low income people.

R. 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, Product, Service, Licensed Services or Deliverable, including any and all components, and to implement and develop self-sufficiency with regard to the Application, Software, Solution, Product, Service, Licensed Services or Deliverable, including any and all components, provided by Supplier in fulfilling its obligations under the Contract.

S. EFFECTIVE DATE

The date this Contract goes into full force and effect as set forth in the preamble of this Contract above.

T. ESCROW AGENT

The person or entity that holds and maintains all Software source code and related technical and user Documentation, along with a signed copy of the Escrow Agreement attached to this Contract as Exhibit E, in trust for the Parties as set forth in the "Escrow Agreement" section of this Contract below.

U. FEDERAL TAX INFORMATION ("FTI")

FTI consists of federal tax returns and return information (and information derived from it) that is in the possession or control of DMAS, which is covered by the confidentiality protections of the Internal Revenue Code ("IRC") and subject to the IRC § 6103(p)(4) safeguarding requirements including IRS oversight. FTI is categorized as "Sensitive" but "Unclassified" information and may contain personally identifiable information.

V. HEALTH RECORD

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. (Code § 32.1-127.1:03)

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X. INTENTIONALLY LEFT BLANK

Y. LICENSED SERVICES

The operation of the Application and the necessary operating system software, hardware, and utilities on Supplier's host computer system; furnishing Supplier Product to Application users; storing Content; and making the Application, Content, and Supplier Product available to Application user(s) via the Web Site, as more fully described in Exhibit A.

Z. INTENTIONALLY LEFT BLANK

AA. INTENTIONALLY LEFT BLANK

BB. MAINTENANCE/WARRANTY SERVICES

Those services, preventive and remedial, provided or performed by Supplier under the Contract or for DMAS in order to ensure continued operation of the Product, Hardware, or Software, including Software Updates. Maintenance Services include support services. Maintenance

Services for Software may include the development of Work Product, if so authorized in the Contract. All maintenance services are provided under the Warranty associated with this Contract.

CC. PARTY
Supplier, DMAS.

DD. PRODUCT
Hardware, peripherals, and any other equipment, including the System Software, all upgrades, all applicable user documentation, and related accessories as set forth on Exhibit A..

EE. PROTECTED HEALTH INFORMATION ("PHI")
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. PHI excludes individually identifiable health information in (a) education records covered by the Family Educational Rights and Privacy Act (20 U.S.C.§ 1232g); (b) records of any student who is 18 years of age or older, or is attending a postsecondary school, that 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 that 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; and (c) employment records held, in its role as employer, by a health plan, health care clearinghouse, or health care provider that transmits health information in electronic form. (§ 64.2-2100 of the Code)

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

GG. REQUIREMENTS
The functional, performance, operational, compatibility, Acceptance testing criteria, and other parameters and characteristics of the Product, Software, Solution, Service(s), Application and Licensed Services and Deliverables, including any and all components, as authorized by any combination of the Contract, as set forth in Exhibit A or the Contract documents, and such other parameters, characteristics, or performance standards that may be agreed upon in writing by the Parties.

HH. SERVICES
Any work performed or service provided by Supplier – including the design and development of software and modifications, software updates, solution, products, implementation, installation, maintenance, support, testing, training, or other provision of service – in meeting the Requirements and fulfilling Supplier's obligations under the. "Services" includes all functions, responsibilities, activities, and tasks of the Supplier that are an inherent, necessary, or customary part of the Services, or are required for the proper performance or provision of the Services. As permitted by the scope of the Contract, "Services" may include the discovery, creation, or development of Work Product.

II. SOFTWARE
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 Software, "Software" means the programs and code, and any subsequent releases, provided by Supplier under this Contract as set forth in Exhibit A or as described on Supplier's US and International price lists in effect at time of Contract execution. If this Contract is for Software Maintenance, "Software" also includes the programs and code provided by Supplier under the Contact in the form of Software Updates.

JJ. SOFTWARE PUBLISHER
The third-party licensor of the Software, other than the Supplier, provided by Supplier under this Contract.

KK. SOLUTION
The Supplier's contractually committed technical approach for solving an information 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.

LL. SUBCONTRACTOR

Any entity to which Supplier (or other Subcontractor of any tier) has subcontracted for performance of, or delegated any of its responsibilities under the Contract, including an affiliate of the Supplier.

MM. SUPPLIER

The entity set forth in the preamble of this Contract and any entity that controls, is controlled by, or is under common control with Supplier.

NN. SUPPLIER PERSONNEL

Any and all of Supplier's employees, agents, contractors, or Subcontractors performing under this Contract.

OO. SUPPLIER PRODUCT

Supplier's proprietary reports, information, and data made available to DMAS as part of the Licensed Services.

PP. SWAM

Any entity certified by the Commonwealth's Department of Small Business and Supplier Diversity as a small, women-owned, minority-owned, or service disabled veteran-owned business, as defined in Code §§ 2.2-2000.1 and 2.2-4310, or a certified micro business as defined in Executive Order Number 35 (2019).

QQ. TRANSITION OUT PLAN

The written plan developed by Supplier addressing the transition of Supplier's contractual obligations, in whole or in part, away from the Supplier and to DMAS, or its designee, after the expiration or termination of the Contract.

RR. TRANSITION PERIOD

The period of time after the expiration or termination of the Contract that Supplier is obligated to continue providing assistance to DMAS so as to transition the Supplier's contractual obligations, or any portion thereof, to any other supplier.

SS. UPDATE

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.

TT. VITA

The Virginia Information Technologies Agency of the Commonwealth of Virginia pursuant to Chapter 20.1 (§§ 2.2-2005 et seq.) of the Code, or any successor agency.

UU. WARRANTY PERIOD

The period of time during which Supplier is obligated to provide maintenance for a unit of Software or Product. For DMAS contracts, the warranty period shall extend for the entire duration of the Contract.

VV. WEB SITE

The Internet site operated by Supplier to provide access to the Application, with the Uniform Resource Locator ("URL") specified in the Contract documents (or any successor URL(s)).

WW. 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 discovered, created, or developed by Supplier, or jointly by Supplier and DMAS in the performance of this Contract. Work Product does not include configuration of software, nor does it include anything developed by Supplier prior to, or outside of, this Contract.

    NOTE ON WW:

COTS products and Software as a Service (SaaS) solutions are designed developed and licensed by the vendor, and the Commonwealth in not entitled to ownership rights to the core program, unless otherwise specified in the Contract documents. When CMS enhanced match funding is used for COTS configuration or customization, those elements become subject to the existing regulation at 42 CFR § 495.360 regarding state and federal ownership and royalty-free licensing. The requirement for a royalty-free, non-exclusive, and irrevocable license to software referenced in that regulation applies only to software related to the customization and configuration of a COTS products for Commonwealth use (Work Product as described above) and does not apply to the core product. The Commonwealth, and other states, could freely share and re(use) the resulting COTS software configuration and customization (Work Product(subject to the licensing of the core COTS software products.

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, will be effective and legally binding for a period of four (4) years ("Initial Term"). DMAS, in its sole discretion, may renew this Contract for up to four (4) additional one (1) year renewal periods after the expiration of the Initial Term (collectively with the Initial Term, the "Contract Term"). DMAS will issue a written notification to the Supplier stating DMAS' intention to exercise a renewal period no less than 30 calendar days prior to the expiration of any current term.

B. TERMINATION FOR CONVENIENCE

DMAS may terminate this Contract, in whole or in part, at any time and for any reason upon not less than 30 calendar days prior written notice to Supplier.

C. TERMINATION FOR BREACH

In the event of breach by the Supplier, DMAS will have the right to terminate this Contract, in whole or in part. Supplier will be deemed in breach in the event that Supplier fails to meet any material obligation set forth in this Contract. Any termination under the provisions of this section will be deemed a "Termination for Breach".

If DMAS deems the Supplier to be in breach, DMAS shall provide Supplier with notice of breach and allow Supplier 15 business days to cure the breach. If Supplier fails to cure the breach as noted, DMAS may immediately terminate this Contract, in whole or in part. In addition, if Supplier is found by a court of competent jurisdiction to be in violation of or to have violated 31 U.S.C. § 1352, or if Supplier becomes a party excluded from Federal Procurement and Nonprocurement 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 U.S.C. § 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. EFFECT OF TERMINATION

Upon termination, neither the Commonwealth nor DMAS will have any future liability except for Deliverables accepted by DMAS or Services (including any 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, Supplier shall accept return of any Deliverable that was not accepted by DMAS, and Supplier shall refund any monies paid by DMAS for the unaccepted Deliverable. Supplier will bear all costs of de-installation and return of Deliverables.

F. **TERMINATION BY SUPPLIER**

In no instance will termination by Supplier be considered. Failure by DMAS to make timely payments owed to Supplier for its performance under this Contract will constitute a breach by that DMAS. Supplier's remedy for a breach is limited to the remedies set forth in Code § 2.2-4363 and the "Remedies" section of this Contract below.

G. **TRANSITION OF SERVICES**

At the request of DMAS prior to or upon expiration or termination of this Contract, Supplier shall provide all assistance as DMAS may reasonably require to transition the Supplier's contractual obligations, or any portion thereof, to any other supplier with whom DMAS contracts for provision of same. This Transition Period obligation may extend beyond expiration or termination of the Contract for a period of three (3) months. If this Contract includes Supplier's provision of licensed products, Supplier shall take no action to restrict or terminate the use of such licensed products after the date of expiration or termination of the Contract or during any Transition Period, or both. DMAS shall pay for any additional maintenance or licensing fees during any Transition Period at the hourly rate or at a fee agreed upon by Supplier and DMAS. Supplier shall provide all reasonable transition assistance requested by DMAS to allow for the expired or terminated portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to DMAS. The transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to transition assistance. Further, any Transition Period will not affect DMAS' rights in regards to any purchased Software perpetual licenses which are paid in full.

H. **CONTRACT KICK-OFF MEETING**

Within 30 calendar days of the Effective Date, Supplier may be required to attend a contract orientation meeting, along with DMAS contract manager/administrator, DMAS project manager(s) or authorized representative(s), 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.

I. **TRANSITION OUT PLAN**

Within three (3) months of the Effective Date, Supplier will develop and distribute to DMAS a Transition Out Plan. The Supplier will maintain the Transition Out Plan throughout the Term, and update the Transition Out Plan as needed and subject to DMAS' approval.

J. **CONTRACT CLOSEOUT**

Prior to the Contract's expiration date, Supplier may be provided contract closeout documentation by DMAS. If contract closeout documentation is provided, then Supplier shall complete, sign, and return to DMAS Supply Chain Management any required documentation within 30 calendar days of receipt to ensure completion of closeout administration and to maintain a positive performance reputation with the Commonwealth. Any required closeout documentation not received within 30 calendar 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 to the Supplier, including final payment, until the documentation is returned to DMAS.

4. **SUPPLIER PERSONNEL**

A. **SELECTION AND MANAGEMENT OF SUPPLIER PERSONNEL**

Supplier shall ensure that all Supplier Personnel performing under this Contract are competent and knowledgeable of the contractual arrangements and the Contract documents between DMAS and Supplier. Supplier acknowledges that Supplier is the employer of all Supplier employees and shall have the 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 employees. Supplier shall be solely responsible for the supervision and conduct of Supplier Personnel, including all acts, omissions, gross negligence, and willful misconduct of Supplier Personnel. Additionally, Supplier shall ensure that Supplier Personnel comply with the appropriate 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 Supplier Personnel whom 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. KEY PERSONNEL

Contract documents may designate certain of Supplier's personnel as "Key Personnel" or "Project Managers". Supplier's obligations with respect to Key Personnel and Project Managers will be described in the Contract documents. Any changes to Key Personnel must be mutually agreed to in writing by Supplier and DMAS. Failure of Supplier to perform in accordance with such obligations may be deemed a breach of this Contract or of the Contract documents.

C. SUBCONTRACTORS

Supplier shall not use Subcontractors to perform its contractual obligations pursuant to the Contract unless specifically authorized in writing to do so by DMAS. If the Contract is supported in whole or in part with federal funds, Supplier may not subcontract to any Subcontractor that is a party excluded from Federal Procurement and Nonprocurement Programs. In no event may Supplier subcontract to any Subcontractor that is debarred by the Commonwealth or that 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 shall (i) act as prime contractor and will be the sole point of contact with regard to all obligations under this Contract; and (ii) represent and warrant 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 Supplier 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 SERVICES OFFERINGS NOT AVAILABLE FROM SUPPLIER

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

If DMAS elects to acquire new products or services as described in the paragraph above 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. GENERAL WARRANTY

THE OBLIGATIONS OF SUPPLIER UNDER THIS GENERAL WARRANTY SECTION ARE MATERIAL. SUPPLIER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, ANY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY OTHER PARTICULAR PURPOSE.

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

A. OWNERSHIP

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

B. COVERAGE PERIOD

During the Warranty Period which extends for the duration of the Contract, or as specified in the Contract documents, Supplier warrants that any Deliverables provided by Supplier under this Contract will 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. PERFORMANCE WARRANTY
With respect to Supplier's performance under this Contract:

i. Supplier shall perform all contractual obligations with the 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; and

ii. Supplier shall ensure that any contractually-obligated Services or Deliverables, or both, meet or exceed the Requirements and that any Product will function in conformance with the Requirements.

D. DOCUMENTATION AND DELIVERABLES
i. Any required Documentation Supplier is obligated to provide under this Contract will be sufficient in detail and content to allow an appropriately trained user/programmer to understand and fully utilize, as applicable, the Deliverables without reference to any other materials or information.

ii. All Deliverables provided or delivered pursuant to this Contract are at the current release level unless DMAS specifies an older version in the Contract documents.

iii. No Update, engineering change, or revision made to any Supplier-provided Deliverables will (a) degrade the performance of any Deliverable or its components to a level below that defined in the Requirements or the Product manufacturer's or Software Publisher's published specifications, as applicable; (b) cause any other warranty to be breached; or (c) require DMAS to acquire additional hardware equipment or software.

E. COMPONENT WARRANTY
For any Component, the applicable warranty period shall be the period from written acceptance of the Component until final acceptance of the Solution, or as specified in the Contract documents.

F. 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 and the Contract documents.

G. LICENSED SERVICES APPLICATION AND DOCUMENTATION
Supplier warrants the following with respect to the Licensed Services and the Application:

i). The Application is pursuant to a particular Request for Proposal ("RFP"), and therefore such Application shall be fit for the particular purposes specified by DMAS in the RFP and in this Contract.   Supplier is possessed of superior knowledge with respect to the Application and is aware that DMAS is relying on Supplier's skill and judgment in providing the Licensed Services, including the Application.

ii). Supplier represents and warrants (i) that it shall perform the Licensed Services in conformity to the specifications set forth in Exhibit A in a professional and workmanlike manner and (ii) that the Licensed Services shall not infringe any third party proprietary rights including (without limitation) any trademark, trade name, trade secret, copyright, moral rights, patents or similar intellectual property rights.

iii). Supplier warrants that the Application and Licensed Services will conform in all material respects to the Requirements set forth in this Contract. Supplier warrants that the Application Licensed Services will conform to the applicable specifications and Documentation, not including any post-Acceptance modifications or alterations to the Documentation which represent a material diminishment of the functionality of the Application, Licensed Services or Supplier Product. Supplier also warrants that such Application and Licensed Services are compatible with and will operate successfully when used on the equipment in accordance with the Documentation and all of the terms and conditions hereof.

iv). The Application provided hereunder is at the current release level unless DMAS specifies an older version in Contract documents;

v). No corrections, work arounds or future Application releases provided by Supplier shall degrade the Application, cause any other warranty to be breached, or require DMAS to acquire additional hardware equipment or software, or licensed services;

vi). Supplier warrants that all post-Acceptance Updates, changes, alterations or modifications to the Application, Licensed Services and Documentation by Supplier will be compatible with, and will not materially diminish the features or functionality of the Application, Licensed Services and/or Supplier Product when used on the equipment in accordance with the Documentation and all of the terms and conditions hereof.

vii). 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 to understand and utilize fully the Application without reference to any other materials or information.

H.   PRIVACY AND SECURITY

Supplier warrants that Supplier and its employees, subcontractors, partners and third party providers have taken all necessary and reasonable measures to ensure that the Application, Licensed Services, Supplier Product, and any related deliverables do not include any degradation, known security vulnerabilities, or breach of privacy or security. Supplier agrees to notify DMAS of any occurrence of such as soon as possible after discovery and provide DMAS with fixes or upgrades for security vulnerabilities within 90 days of discovery, or as dictated by the Business Associate Agreement, whichever is sooner.

I.   ACCESS TO PRODUCT AND PASSWORDS

Supplier warrants that the Application and Licensed Services do not contain disabling code or any program device or other undisclosed feature, including but not limited to, viruses, worms, trojan horses, or other code which is designed to permit unauthorized access, delete, disable, deactivate, interfere with or otherwise harm the Application, Licensed Services or the hardware or software of DMAS or its Application Users. In addition, Supplier warrants that DMAS and its Application Users will be provided commercially reasonable uninterrupted access to the Application. Supplier also warrants that it will not cancel or otherwise terminate access to the Application by disabling passwords, keys or tokens that enable continuous use of the Application by DMAS and its Application Users during the Contract Term. Supplier further warrants that the Application and Licensed Services are compatible with and will operate successfully on the equipment.

J.   OPERATING SYSTEM AND SOFTWARE SUPPORTABILITY

Supplier warrants that Supplier and its employees, subcontractors, partners and third party providers have taken all necessary and reasonable measures to ensure that the Application, Licensed Services, Supplier Product, and any deliverables do not have dependencies on other operating systems or software that are no longer supported by Supplier, or its Subcontractors, partners and third-party providers.

K.   MALICIOUS CODE

Supplier has used commercially reasonable efforts through quality assurance procedures to verify that there are no Computer Viruses or undocumented features in any of the Deliverables, as obligated and provided by Supplier under the Contract documents, at the time of delivery to DMAS. Supplier has used the best available means to scan any media provided to DMAS. Supplier warrants that the Deliverables, as obligated and provided by Supplier, do not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent DMAS' use of the Deliverables.

Notwithstanding any rights granted under this Contract or at law, Supplier waives, under any and all circumstances, any right it has or may have in the future to exercise its license termination rights by electronic means. 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.

L.   OPEN SOURCE

Supplier will notify DMAS if any Deliverables, as obligated and provided by Supplier, contain 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.

M. SUPPLIER VIABILITY

Supplier has the financial capacity to perform and continue to perform its obligations under this Contract. 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. Further, Supplier is not prohibited by any contract, or order by any court of competent jurisdiction from entering into this Contract.

N. SUPPLIER'S PAST EXPERIENCE

Supplier 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.

7. SOFTWARE LICENSE

Any and all license rights granted pursuant to this Contract will be held pursuant to the terms of the "Licensing Within the Commonwealth" section of this Contract below.

A. LICENSE GRANT

    i. Software Licensed by Supplier

> **Commented [AK(1):** Note to Suppliers: Supplier should indicate in its proposal response if Option i. and/or Option ii. is/are applicable to the Solution.

Supplier grants to the Commonwealth and 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, restrictions, or both explicitly set forth in this Contract. It is expressly understood that "perpetual" license rights commence upon delivery of the Software to DMAS and exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of this Contract. The Software is the property of Supplier, and no title or ownership of the Software or any of its parts, including Documentation, is or will be transferred to the Commonwealth or DMAS by this license grant.

DMAS will 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. Except as expressly authorized, DMAS may not distribute the Software to any third party without Supplier's prior written consent.

DMAS may allow access to the Software by third party vendors who are under contract with DMAS to provide services to or on behalf of DMAS, or by other entities as required for conducting the business of government. Access includes loading or executing the Software on behalf of DMAS or its agents.

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, resolution, debugging, new version evaluation, Software interface testing, and disaster recovery technique analysis and implementation.

Supplier shall provide replacement copies of the Software and Documentation in the event that all of DMAS' copies of the Software, including all backup copies, are destroyed, irreparably damaged, or otherwise lost due to disaster or other event beyond DMAS' reasonable control, Supplier shall provide to DMAS replacement copies of the Software and Documentation. These replacement copies will be provided to DMAS at no additional cost. Nothing contained in this section will obligate Supplier to replace or assist in the recovery of data lost concurrent with the loss of the Software.

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. Any copies of the Software or Documentation that DMAS makes under this Contract must bear all copyright, trademark, and other proprietary notices included by Supplier. DMAS may add its own copyright or other proprietary notice of the Commonwealth to any copy of the Software or Documentation that is modified by DMAS and to which the Commonwealth or DMAS has ownership rights pursuant to this Contract.

Except as expressly authorized, DMAS may not distribute the Software to any third party without Supplier's prior written consent.

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.

ii. 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") is subject to the License Agreement Addendum ("LAA") attached to this Contract as Exhibit F. 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 will be added to Exhibit F for reference, but will not become a part of this Contract.

B. **LICENSE TYPE**

All licenses granted, regardless of the type, include all uses set forth above. License type may vary by Software product and will be set forth in Exhibit B and identified in this Contract.

Option 1 - Designated CPU License

The license(s) granted to DMAS under this Section authorize the use of the Software only on the number of CPU(s) listed in the Contract documents. DMAS may transfer the Software to a different machine to the extent that the license price for the 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; (iii) modification to the licensed CPU; or (iv) transfer of Software to another CPU, DMAS may use the Software on a replacement CPU as long as required by the above-stated conditions.

Option 2 - Concurrent User License

The license(s) granted to DMAS under this section authorize the use of the Software on any system based on the total number of Concurrent Users. DMAS shall specify an initial number of Concurrent User licenses in this Contract. DMAS may increase the number of Concurrent User licenses by executing a Contract modification for additional Concurrent User licenses. The license fee for additional Concurrent User licenses and payment of the license fee is set forth in Exhibit B attached to this Contract.

Option 3 – 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 Contract documents

Option 4 – Project Specific License

The "Project Specific License" authorizes the use of the Software on any CPU or system owned or operated by the Commonwealth or DMAS, and by any user, without limitation as to quantity or location for the duration of Project _____.

Option 5 – 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, location, or project.

C. **DMAS COMPLIANCE**

Compliance with the terms and conditions of any license granted pursuant to this Contract is solely the responsibility of DMAS that purchased the license or for whom that license was purchased. DMAS will have no responsibility for compliance with the terms and conditions of the purchased license, unless DMAS purchased the license on its own behalf.

D. **NO SUBSEQUENT, UNILATERAL MODIFICATION OF TERMS BY SUPPLIER ("SHRINK WRAP")**

The terms and conditions set forth in this section supersede and govern the licensing and delivery of all Products and Services in this Contract. The terms and conditions of this Contract will supersede any other provision or other unilateral license terms that may be issued by Supplier after the Effective Date, regardless of when those provisions were proposed or the fact that another agreement may be affixed to, or accompany, Software upon delivery ("shrink wrap").

<div style="border:1px solid #aaa">
Commented [AK(2): Note to Suppliers: Supplier should describe the type(s) of licenses provided to DMAS as a part of its Proposal, and provide a description of those license type(s) below. Supplier is not limited to the options below.
</div>

E. RESERVATION OF RIGHTS

Nothing contained in this section will be construed to restrict or limit the rights of the Commonwealth or DMAS to use any technical data that the Commonwealth or DMAS may already possess or acquire under proper authorization from other sources.

8. RIGHTS TO WORK PRODUCT

Any license to pre-existing work will be held, and all rights in, title to, and ownership of Work Product will vest, pursuant to the terms of the "Licensing Within the Commonwealth" section of this Contract below.

A. WORK PRODUCT

DMAS and Supplier mutually acknowledge that performance of this Contract may result in Work Product. The Parties shall document all Work Product specifications and these specifications will be set forth in Exhibit A and incorporated into this Contract. Supplier shall promptly and fully disclose to the Commonwealth or DMAS any and all Work Product generated, conceived, reduced to practice, or learned by Supplier or any Supplier Personnel, 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, DMAS. Supplier and Supplier Personnel shall not make use of, or disclose to others, any proprietary information relating to the Work Product, other than as is required in the performance of this Contract. All Services performed pursuant to this Contract will include delivery of all source and object code and all executables and documentation for all Work Product. At no time may Supplier deny or DMAS access to the Work Product, regardless of form. Please see note on use and re-use in the Work Product definition for additional information on Work Product funded by enhanced federal match funds.

B. OWNERSHIP

All Work Product discovered, created, or developed under this Contract, is and will remain the sole property of DMAS, regardless of whether the Deliverable or Services are considered "works made for hire" or "hired to invent". Supplier agrees that DMAS will 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.

Supplier irrevocably transfers, grants, conveys, assigns and relinquishes exclusively to DMAS 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 expressly waives all moral rights created in the Work Product. Supplier shall assist DMAS 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. Upon the reasonable request by DMAS with respect to the Work Product, Supplier and any required Supplier Personnel shall execute all documents necessary for use in applying for and obtaining patents, copyrights, and other rights and protection, and in protecting trade secrets with respect to the Work Product.

Supplier agrees that the provisions of this section will survive any termination of this Contract by DMAS. Supplier also agrees that in the event of a breach of this Contract by DMAS, Supplier's remedy will not include any right to rescind, revoke, or otherwise invalidate the provisions of this section.

Supplier acknowledges that in the case of DMAS which is a public body of the Commonwealth, all rights and remedies afforded that DMAS under this section shall also be held and exerciserable 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 grants to the Commonwealth or DMAS 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. Supplier will retain all ownership rights in any pre-existing works.

D. RETURN OF MATERIALS

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

9. **SOFTWARE ESCROW AGREEMENT**

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 the Escrow Agent the signed escrow agreement as set forth in Exhibit E ("Escrow Agreement") attached to this Contract and incorporated by reference

DMAS acknowledges that, prior to the Effective Date of this Contract, Supplier delivered to DMAS the executed Escrow Agreement naming the Commonwealth as a third party beneficiary. DMAS has reviewed the Escrow Agreement to ensure that the Escrow Agreement does not impose upon the Commonwealth any requirements or obligations other than administrative responsibilities necessary for the operation of the Escrow Agreement. In the event the Escrow Agent is obligated to release the escrowed materials to the Commonwealth, the Commonwealth's sole responsibility will be to request the release of the escrowed materials from the Escrow Agent. Supplier agrees to notify DMAS in writing not less than 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. Supplier further warrants that the information and materials include the most current versions used by 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, and support all phases of the SDLC for all tiers of the Software as used in DMAS solution or operating environment;

iii. all Documentation related to items (i) and (ii) above, as well as all necessary and available information; and

iv. (a) technical Documentation that will enable DMAS, or an Agent of DMAS to create, maintain, 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); (b) descriptions of the system/program generation; and (c) descriptions of any Supplier tools required to enable DMAS to continue to use the Software.

Supplier shall provide all Documentation 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 will be verified by the Escrow Agent within 30 calendar days after deposit to validate the completeness, accuracy, and functionality of the Supplier's escrow deposits. Supplier also warrants that the Escrow Agreement details the verification process to be performed by the Escrow Agent for the original deposit as well as all subsequent deposits. Supplier shall provide DMAS a detailed report of all verification tests conducted by the Escrow Agent within ten (10) business days of completion.

Escrow Agent shall conduct a verification process that includes but is not be limited to:

v. 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.

vi. 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.

vi. 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.

viii. 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' site.

ix. 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 environment.

x. Final Operability Test – To perform a final demonstration of the functioning software.

xi. 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.

Supplier warrants that the Escrow Agreement provides for the release of the list of items on Attachment A of the Escrow Agreement upon the occurrence 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 calendar days, Supplier's breach 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.

In the event that the information and materials listed on Attachment A of the Escrow Agreement are released to the Commonwealth pursuant to the terms of the Escrow Agreement, Supplier 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 under this Contract, along with all related documentation.

10. DELIVERY AND INSTALLATION

A. SCHEDULING OF SOLUTION DELIVERY
Supplier shall deliver the Solution, including any Component parts, and complete performance of Services according to the delivery dates set forth in the Contract documents.

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 will be considered "shipped short" until the applicable documentation has been received.

B. DEPLOYMENT OF SOLUTION
1. Supplier Deployment of Solution

The Solution fee listed in Exhibit B includes initial deployment of the complete Solution. Supplier shall deploy the Solution in accordance with the deployment schedule set forth in the Contract documents. Deployment will include the installation of any Software Component and, if agreed, any Product or hardware Component, of the Solution. Supplier shall conduct its standard appropriate diagnostic evaluation at DMAS' user site to determine that the Solution is properly deployed and fully ready for productive use, and will provide 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 Contract documents constitutes a material breach of this Contract resulting in damages to DMAS. the delay lasts longer than 30 calendar days, DMAS may immediately cancel Contract and collect damages for each day of that period of late delivery. DMAS may also pursue any and all other remedies available at law or in equity for delays lasting longer than 30 calendar days or for non-deployment.

2. DMAS Installation of Software

For a Solution that includes Software that DMAS elects to install itself, the Software will be deemed to be installed when all Acceptance criteria as specified in the Contract documents have been met. Upon completion of installation and successful Acceptance testing, DMAS shall provide to Supplier written notice of Acceptance. Supplier shall proceed with full deployment of the Solution concurrently with or after DMAS' installation of the Software, as agreed between DMAS and Supplier the Contract documents.

C. DOCUMENTATION OF SOFTWARE CONFIGURATION

If the Solution includes configuration of Software by Supplier, Supplier shall provide Documentation containing a description of the configuration to the appropriate DMAS. The Documentation must be of sufficient detail so that any appropriately trained employee or Agent of DMAS may reconstruct the configuration of the Software.

11. ACCEPTANCE AND CURE PERIOD

A. SOFTWARE AND DELIVERABLE ACCEPTANCE CRITERIA

Software and Deliverables are deemed accepted when DMAS determines that the Software and Deliverables successfully operate in accordance with the Requirements and Contract documents. Acceptance of the Software and Deliverables, and for the Solution as a whole, requires delivery to DMAS of all of functionality listed in the Requirements as set forth in Exhibit A and required by DMAS in the Contract documents. Supplier shall be responsible for ensuring that all Deliverables function properly within the Solution. Acceptance of any one Deliverable will not imply DMAS' concurrence that the Deliverable will function properly with or within the Solution. In the event that a previously Accepted Deliverable requires further modification in order to work properly with or within the Solution, Supplier shall provide the modification and cover all associated costs.

DMAS shall commence Acceptance testing within thirty (30) calendar days, or within the agreed to period set forth in the Contract documents, after (i) receipt of the Software or Deliverable or (ii) being granted access to the Solution. The Acceptance testing period for the first instance of each Product type set forth in Exhibit B will last no longer than thirty (30) calendar days, unless a longer period is agreed to in writing between DMAS and Supplier. Throughout the Acceptance testing period, Supplier shall provide to DMAS any assistance and advice as DMAS may reasonably require. Supplier shall provide this assistance and advice at no additional cost, other than pre-approved travel expenses incurred which are reimbursable by DMAS pursuant to the terms and conditions of the "Reimbursement of Expenses" section of this Contract below. DMAS shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing. In the event that DMAS fails to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) business days following the end of the Acceptance testing period, Supplier should escalate the Acceptance response as appropriate. There is no deemed Acceptance of the Solution.

B. SOLUTION ACCEPTANCE CRITERIA

The Solution will be deemed accepted when DMAS determines that the Solution successfully operates in accordance with the Requirements and, if applicable, successful completion of Acceptance testing. DMAS shall commence Acceptance testing within XX (XX) calendar days after deployment of the Solution. The Acceptance testing period will be completed within XX (XX) calendar days after deployment of the Solution, or such longer period as may be agreed to in writing between DMAS and Supplier. Supplier shall provide DMAS with any assistance and advice DMAS may reasonably require during the Acceptance testing. Throughout the Acceptance testing period, Supplier shall provide to DMAS any assistance and advice as DMAS may reasonably require. Supplier shall provide this assistance and advice at no additional cost, other than pre-approved travel expenses incurred which are reimbursable by DMAS pursuant to the terms and conditions of the "Reimbursement of Expenses" section of this Contract below. DMAS shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing. In the event that DMAS fails to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) business days following the end of the Acceptance testing period, Supplier should escalate the Acceptance response as appropriate. There is no deemed Acceptance of the Solution.

C. SOFTWARE AND DELIVERABLE CURE PERIOD

Supplier shall correct any non-conformities identified during Acceptance testing and re-submit the corrected Software or Deliverable for re-testing within seven (7) calendar days of receipt of the appropriate DMAS' written notice of non-conformance, or as otherwise agreed between DMAS and Supplier in the Contract documents. In the event Supplier fails to cure the non-conformity or deliver Software or a Deliverable that meets the Requirements, DMAS may, in its sole discretion: (i) reject the Software or Deliverable in its entirety and recover amounts previously paid to Supplier; (ii) issue a "partial Acceptance" of the Software or Deliverable with an equitable adjustment in the price to account for any deficiency; or (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 will constitute a breach by Supplier, and DMAS may, at its sole discretion, terminate this Contract, in whole or in part, for the Solution to be provided by Supplier.

D. SOLUTION CURE PERIOD

Supplier shall correct any non-conformities identified during Acceptance testing and re-submit the corrected Solution or Component products or Services for re-testing within 15 business days of receipt of written notice of non-conformance to Supplier, or as otherwise agreed between DMAS and Supplier. In the event that Supplier fails 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 to the Supplier; (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 will constitute a breach by Supplier, and DMAS may, at its sole discretion, terminate this Contract, in whole or in part, for the Solution to be provided by Supplier.

E. LICENSED SERVICES COMMENCEMENT DATE

The Supplier shall begin delivery of Licensed Services on the date requested by DMAS and agreed to by the Supplier in the Contract documents. DMAS may delay the Licensed Services commencement date by notifying the Supplier at least ten (10) days before the scheduled Licensed Services commencement date.

F. LICENSED SERVICES ACCEPTANCE CRITERIA

G. THE APPLICATION SHALL BE DEEMED ACCEPTED WHEN DMAS REASONABLY DETERMINES THAT DMAS AND ITS APPLICATION USERS CAN SUCCESSFULLY ACCESS AND USE ALL FUNCTIONALITIES OF THE APPLICATION WHICH SUPPLIER IS REQUIRED TO PROVIDE TO SUCH USERS. DMAS AGREES TO COMPLETE ACCEPTANCE TESTING WITHIN THIRTY (30) DAYS AFTER RECEIVING WRITTEN NOTICE FROM SUPPLIER OF THE ABILITY OF DMAS AND ITS APPLICATION USERS TO ACCESS THE APPLICATION, OR WITHIN SUCH OTHER PERIOD AS SET FORTH IN THE CONTRACT DOCUMENTS. 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 INCURRED WHICH WILL BE REIMBURSABLE BY DMAS AT THE THEN CURRENT PER DIEM AMOUNTS SET FORTH BY THE VIRGINIA DEPARTMENT OF ACCOUNTS AND PUBLISHED AT: HTTP://WWW.DOA.VIRGINIA.GOV/ OR A SUCCESSOR URL(S). LICENSED SERVICES CURE PERIOD

If during the Acceptance test period, DMAS is unable to access the licensed functionalities of the Application, Supplier shall provide DMAS with such access, and DMAS' Application Users with their required access, within seven (7) days of written notice of inability to access, or as otherwise agreed between DMAS and Supplier in the Contract documents. Should Supplier fail to provide access to the licensed functionalities of the Application, DMAS may, in its sole discretion: (i) reject the Application in its entirety and recover amounts previously paid hereunder; (ii) issue a "partial Acceptance" of the Application access with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Application access while reserving its right to revoke Acceptance if timely correction is not forthcoming.

If DMAS and its Application Users are unable to access the licensed functionalities of the Application after a second set of acceptance tests, Supplier shall be deemed in default of the Contract. In the event of such default, DMAS may, at its sole discretion, terminate the Contract, in whole or in part, for the Licensed Services to be provided thereunder by Supplier.

12. SOLUTION WARRANTY AND MAINTENANCE SERVICES

At any time during the Warranty Period, 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, Supplier shall perform these services without additional charge to DMAS, in accordance with the terms of this section and Exhibit B.

A. KNOWN DEFECTS

Upon Supplier's knowledge of any defects or malfunctions, Supplier shall notify DMAS immediately, in writing (email is sufficient), and work with DMAS to expediently create a mutually agreed upon schedule to correct the defects or malfunctions, or provide a work around until corrected, and provide DMAS with corrected copies of same.

B. NEW RELEASES

No later than the first day of general release, Supplier shall provide to DMAS 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

Supplier shall provide all reasonably necessary telephone or written consultation requested by DMAS in connection with use, problems, and operation of the Solution. Supplier is obligated to provide coverage under this provision on a 24 hours per day, seven days per week basis.

D. SERVICE LEVELS

Supplier shall respond to problems with the Solution identified by DMAS in no more than one (1) hour after notification. Supplier shall resolve all problems according to the following schedule:

   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) calendar.

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

E. SOFTWARE EVOLUTION

In the event that Supplier or Software Publisher merge or splinter the Software previously provided to DMAS, Supplier shall not charge DMAS additional support fees in order to receive enhancements, releases, upgrades, 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 will be entitled to license such Software product at no additional license or maintenance fee, and subject to the terms and conditions in this Contract.

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 the Software Publisher, or Supplier, or both, ceases to provide Maintenance Services 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. SOLUTION REMEDIES

[Include a separate service level table to address response and restore time remedies for all important performance standards.]]If the Solution or any Component fails to conform in all material respects to the Requirements, DMAS shall provide written notification of the failure to Supplier. If Supplier is unable to make the Solution or any Component conform within 30 calendar of receiving DMAS' notice Supplier shall, at DMAS' request, accept return of the tangible Solution Components at DMAS' request. If the failure of the Solution or any Components occurs during the Warranty Period, Supplier shall return all monies paid by an affected DMAS for the returned Solution Components and Documentation in the following if the failure occurs during the Warranty Period.

H. SOLUTION SUPPORT SERVICES AND RENEWAL OPTIONS

Supplier will continue to provide Solution support Services, applicable software required for the Solution, and Maintenance/Warranty Services throughout the duration of the contract, including option years.

13. APPLICATION AND LICENSED SERVICES SUPPORT

At any time during the term of any order or SOW issued pursuant to this Contract, Supplier shall provide the following Application Services (including unlimited telephonic support and all necessary travel and labor) without additional charge to DMAS in order to ensure DMAS and its Application Users are able to access and use the Application in accordance with the Requirements.

A. COVERAGE

Supplier shall provide to DMAS all reasonably necessary telephone or written consultation requested by DMAS in connection with use, problems and operation of the Application on a basis of 24 hours per day, seven (7) days a week.

B. SERVICE LEVELS

Within one (1) hour of a request from DMAS or VITA, in its governance role, Supplier shall respond to such request for support of Licensed Services regarding the Application and Licensed Services, including Application, Supplier Product, and Documentation in accordance with the procedures identified in Exhibit X of the Contract, "Table of Service Levels, Response and Resolution Times and Escalation Procedures for Licensed Services". DMAS may describe the problem by telephone, electronic mail, or via a web site provided by Supplier. Supplier shall use its best efforts efforts to meet Response Time and Resolution Time and other obligations under this Contract.

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

C. APPLICATION EVOLUTION

Should Supplier merge or splinter the Application previously provided to DMAS, such action on the part of Supplier shall not in any way result in DMAS being charged additional license or support fees in order to access the Application, to enable its Application Users to access the Application, or to receive enhancements, releases, upgrades or support for the Application.

14. SERVICE LEVELS AND REMEDIES FOR CLOUD SERVICES

A. AVAILABILITY

The failure by Supplier to make the Licensed Services Available to DMAS and its Application Users at least 99% of the time in any given month – excluding scheduled maintenance or excusable downtime – during the term of DMAS' order or SOW, will be deemed a service level default ("Service Level Default"). In the event of a Service Level Default, DMAS may obtain the non-exclusive remedies set forth in Exhibit X of this Contract, "Table of Service Levels and Remedies for Licensed Services". For purposes of this Contract, "Available" means that DMAS and its Application Users are able to access all features and functions of the Application and Licensed Services required by DMAS, including but not limited to the Application and Supplier Product.

Supplier shall issue a credit to DMAS for any downtime or period where the Licensed Services are not Available ("Service Level Credit") during any given month of the term of the Contract documents. Service Level Credits will be applied against the next invoice to DMAS. In the event DMAS is eligible for a 100% Service Level Credit under this Section during any given month of the term of the Contract documents, DMAS may terminate without penalty upon written notice to Supplier and, in addition to the remedies available under this Section, receive any additional remedies set forth in the Contract. Additionally, DMAS may, in its sole discretion, exercise a limit on the amount incurred per monthly period, with additional penalties rolling over to subsequent invoices.

In the event a Service Level Default occurs after DMAS has given notice of termination pursuant to the Term and Termination section of this Contract or due to non-appropriation of funds, or DMAS has made final payment to Supplier for the Application and Licensed Services and no further invoices will issue as a result, Supplier shall refund to DMAS the amount of the appropriate Service Level Credit due for the period of default.

B. PROVISIONING

Incremental adds, access authorizations, moves or reductions, including disabled access updates, in the scope of the Licensed Service (e.g., USERIDs), shall be completed within one (1) business hour of a written request (including e-mail or submission to Supplier's provisioning website) from DMAS' designated Administrator. In the event that provisioning is not made available within one (1) business hour of the request, a credit for the incremental amount of the revision shall be applied against the next invoice for 1/30th of the corresponding pro-rated amount.

C. REPORTING

(i) Monthly Reports:

By the 5th of each calendar month during the Contract Term, Supplier shall provide DMAS with the following written monthly reports:

(a) Service Level Performance Report - a report that contains information with respect to the performance of the Application and Licensed Services. Such report, unless otherwise agreed upon by the parties, shall be in conformity with the reporting Supplier provides to its other customers utilizing an application and licensed services identical or similar to the Application and Licensed Services provided to DMAS.

(b) System/Application Patching Compliance Report – a report that illustrates that the supplier has installed security relevant software and firmware updates within 30 days of the release of the updates.

(c) Scanning Reports (OS, Middleware, Applications and Interfaces) Report – a report that illustrates vulnerability scanning of Cloud Service Providers Operating Systems/infrastructure, databases and web applications(d) Geographic Locations of Data Being Hosted Report – a report that illustrates the location of Commonwealth data

(ii) Quarterly Reports:

By the 5th day of the first month of a calendar quarter, during the Contract Term, Supplier shall provide DMAS with the following written quarterly report

(a) Summary Report of Intrusion Detection Scans and Intrusion Prevention Scans – a report that demonstrates that supplier protects commonwealth data with intrusion monitoring tools from unauthorized access, modification and deletion.

Supplier shall submit a copy of each report to VITA at: enterpriseservices@vita.virginia.gov.

Representatives of Supplier and DMAS, and VITA at its option, shall meet as often as may be reasonably requested by either party, but no less often than once each calendar quarter during the Contract Term, to review Supplier's performance of Licensed Services and the performance of the Application and to discuss technical plans, financial matters, system performance, service levels and any other matters related to the above required reports and to this Contract in general that may be reasonably requested by either Supplier or DMAS or VITA. Supplier shall notify VITA of such meetings by email to: enterpriseservices@vita.virginia.gov. DMAS or VITA may independently audit the report at its expense no more than two (2) times annually.

D. FAILURE TO MEET SERVICE LEVEL COMMITMENTS

In the event that such Application fails to meet the Service Levels specified herein, Supplier will: (i) promptly replace the Application with an Application that conforms to this Contract and such specifications; (ii) repair the Application, at Supplier's expense, so that it conforms to this Contract and such specifications; or (iii) refund to DMAS all fees paid for the Application and the Licensed Services after the failure of the Application to meet the Service Levels. In the event Supplier fails to comply with these remedies, DMAS may exercise all available rights and remedies under law and equity.

E. ESCALATION PROCEDURES

15. CLOUD EXIT ASSISTANCE

Upon execution of this Contract, Supplier and DMAS will develop an exit plan ("Exit Plan") detailing each Party's respective tasks for the orderly transition and migration of all Content stored by Supplier pursuant to such order or SOW to DMAS' archive and/or to a system or application maintained by DMAS.

> **Commented [AK(3):** Suppliers should provide draft escalation procedures with the proposal.

At a minimum, the Exit Plan must provide that within 30 days of the expiration or termination of this Contract for any reason (or as otherwise specified in the Business Associate Agreement), Supplier shall return to DMAS all Content in its possession and stored by the Application on behalf of DMAS. Supplier shall return all such Content in a format accessible without the use of Supplier's Application. That format must be searchable, editable, and enable the reasonable (re)use of the Content by the Department or another Supplier/Contractor. Supplier's failure to do so will constitute a material breach of this Contract and DMAS may exercise all available rights and remedies under law and equity, in addition to any remedies set forth in this Contract.

In addition, at DMAS' option, Supplier shall continue to provide Licensed Services for up to six (6) months after the date of expiration or termination of the Contract documents in order to facilitate DMAS' transition to another service model or provider. Supplier shall also provide such reasonable assistance as may be requested by DMAS and agrees such assistance will not be unreasonably withheld. Supplier will perform such assistance at the hourly rate or for the fee agreed upon by Supplier and DMAS. In the event of a termination for breach by Supplier, Supplier shall provide the transition assistance at no charge or fee to DMAS.

16. **RECORDS AND AUDIT**

In order to support charges invoiced to DMAS, Supplier shall maintain accurate records and other evidence pertaining to the costs and expenses for all Licensed Services performed or delivered under any order or SOW issued pursuant to this Contract. The records will be to the extent and in sufficient detail to properly reflect all direct and indirect costs associated with the Contract documents. In addition, Supplier shall maintain accurate records of the Licensed Services including, but not limited to, the "Uptime" and "Downtime" as set forth in the Supplier Responsibilities Section of this Contract. DMAS will have the right, at any reasonable time during regular business hours after giving reasonable advance notice, to inspect and audit the records applicable to its order(s) or SOW(s). Supplier shall preserve such records for three (3) years after termination or completion of the Licensed Services agreed to under this Contract, or any order or SOW issued hereunder.

17. **DESCRIPTION OF LICENSED SERVICES**

During the term of this Contract, Supplier hereby agrees to host the Application(s) listed and described in Exhibit A on servers owned, operated, housed, and maintained by Supplier and shall make such Application(s) available to DMAS' designated Application Users through the Internet

Supplier has acquired any and all license rights in the Application(s) necessary and appropriate for Supplier to provide the Licensed Services as listed and described in Exhibit A for DMAS. Supplier hereby grants each ordering DMAS and its Application Users a non-exclusive, transferable, worldwide license to access and use by any method the Application during the term of this Contract. The license fee for the rights shall be as set forth in Exhibit B, and shall apply regardless of access mode. DMAS is an agency, as defined by §2.2-2006 of the Code, therefore the license shall be held by the Commonwealth. Notwithstanding any other provision or other unilateral license terms which may be issued by Supplier after the Effective Date of this Contract for Licensed Services, including access to the Application(s), or the fact that such other agreement may be presented to DMAS or its Application Users at the time of accessing the Application(s) ("click wrap"), the terms and conditions set forth herein in this Contract and any amendments or modifications thereto shall supersede and govern licensing and use of all products and services hereunder.

18. **SUPPLIER RESPONSIBILITIES**

A. **STANDARD APPLICATION RESPONSIBILITIES**

Unless otherwise indicated in Exhibit A, Supplier shall acquire and maintain, at no charge to DMAS, the hardware and software required to host the Application(s). The hardware and software on which the Application(s) is hosted will be maintained in good operating condition, consistent with or exceeding generally accepted industry practices and procedures. Additionally:

i. Supplier shall maintain sufficient hardware capacity to satisfy the technical requirements and the bandwidth and required storage capacity indicated in Exhibit A.

ii. Supplier shall be responsible for all telecommunication connections from the server hosting the Application to the Internet.

iii. Supplier may collect user-specific data only as necessary to provide the Licensed Services ordered by DMAS. No information regarding DMAS or any Application User shall be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation will extend beyond the Contract Term.

iv. The Application will be made available to DMAS and/or designated Application Users, as specified in the Contract documents, twenty-four (24) hours a day, seven (7) days a week ("Uptime") less Excusable Downtime. For the purposes of this Contract, "Excusable Downtime" is defined as that period of time when the Licensed Services are not available to DMAS or its Application Users due to scheduled network, hardware or service maintenance and/or upgrades. Except in cases of emergency, DMAS shall be provided a two (2) business day advance notification of such maintenance and/or upgrade. In cases of emergency, Supplier will use its best efforts to notify DMAS of a planned Downtime as soon as practicable. Maintenance or upgrades are not to exceed thirty-six (36) hours in duration in a single month and cannot occur Monday through Friday, between the hours of 6:00 a.m. and 8:00 p.m. Eastern Time.

v. Excusable Downtime shall not include (a) an electronic hardware failure; (b) a failure in the Supplier's Application; (c) an electric utility failure at Supplier's facility where the Application is hosted; or (d) a network failure up to, but not including, the interconnection point of Supplier's network to the public switched telephone network.

vi. Supplier guarantees the Application will be available for use at least ninety-nine percent (99%) of the total time during each month, excluding Excusable Downtime.

vii. If non-Excusable Downtime exceeds the parameters listed above, Supplier will credit to DMAS the total recurring fees that would otherwise be owed by DMAS under this Contract during the month of such failure. Such credit will be issued in the month immediately following the failure.

viii. Supplier shall be required to notify DMAS in writing at least sixty (60) days prior to of any planned change(s) or Update(s) to the Application; its functionality; Content storage/ backup/disaster recovery, including physical location; security architecture, features or settings; terminations and/or replacement of any Supplier subcontractor. The planned changes or Updates include any change(s) that would potentially impact the secure and efficient use of the Application, as understood and agreed to between Supplier and DMAS at Contract award. The purpose of this notice is to allow sufficient time for Supplier and DMAS to discuss any technical/functional considerations and/or changes that would require action by the Commonwealth.

ix. Supplier is responsible for documenting and maintaining any customizations made for operational use of the Application and/or for interoperability use with other systems or applications used by DMAS and paid for solely by DMAS. The associated technical data, code, documentation and other necessary information about such customizations shall be provided by Supplier to DMAS within ten (10) business days of the customizations' operational use. Suppler shall be required to routinely transfer knowledge regarding the Application and Licensed Services, including Updates and all material changes, to DMAS in a reasonable manner to ensure proper and efficient use of Application and Licensed Services without degrading performance thereof.

x. Supplier agrees to work with DMAS to ensure compliance with any approved security exceptions or other identified gaps or requirements provided to DMAS in writing by DMAS.

xi.

In addition, and at no additional cost to DMAS, Supplier shall provide access to additional Updates, features, and functionalities of the Application as are provided by Supplier to other customers of Supplier who require functionality similar to that of the Application provided to DMAS. All such additional features and functionality, where reasonably necessary, shall be accompanied by updated Documentation, whether in hard copy format or distributed electronically via email or the Supplier website. Notwithstanding the provisions of this Section and except as agreed to in writing by DMAS and Supplier, nothing in the Contract shall oblige Supplier to undertake any modifications to the Application, and all such modifications are at Supplier's sole discretion whether suggested by DMAS or another party.

B. ANCILLARY RESPONSIBILITIES

Throughout the Contract Term, Supplier shall make available such resources, including Supplier Personnel, as are reasonably required to: (i) train designated DMAS personnel in the use of the Application; (ii) develop modifications to the Application as agreed by DMAS and Supplier in any exhibit hereto or as agreed to by Supplier and DMAS in any order or SOW issued hereunder; and (iii) otherwise support the Application as provided under this Contract and any exhibits hereto or as agreed in any order or SOW issued pursuant to this Contract.

C. SUBCONTRACTORS

It is understood that Supplier may utilize subcontractors to provide integral components of the Licensed Services and Application; however, except for those so named at time of Contract award, Supplier shall not use new or replacement subcontractors to perform or provide integral components of the Licensed Services or Application during performance of this Contract without advance written notification to and approval by DMAS.

Supplier is responsible for the performance of its subcontractors used in providing any portion of the Licensed Services or Application. Additionally, Supplier is responsible for its subcontractors' compliance with the terms and conditions of this Contract.

If this Contract is supported in whole or in part with federal funds, Supplier shall not subcontract any Services pursuant this Contract to any subcontractor that is a party excluded from Federal Procurement and Nonprocurement Programs. In no event shall Supplier subcontract with 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.

19. DMAS RESPONSIBILITIES

Unless otherwise agreed and as applicable, DMAS or its Agent, or an Application User, will be responsible for input of Content into Supplier's Application and DMAS or its Agent will be responsible for keeping said Content current and accurate. Supplier will have no responsibility for assisting DMAS in creating, modifying or inputting the Content, unless specified in Exhibit A.

If Supplier issues unique USERIDs and passwords to an Application User:

a). DMAS is responsible for protecting said passwords and for any authorized and unauthorized use made of the passwords. DMAS will fully cooperate with law enforcement authorities in the detection and prosecution of illegal activity related to unauthorized use of the Licensed Services.

b). DMAS shall have the right to add, activate, change access for, or disable USERIDs at its sole discretion. DMAS shall designate Administrators who will be authorized to add, activate, change access for or disable USERIDs.

c). Upon notification by DMAS of an Application User's disabled access, Supplier shall remove access authorization by said Application User from its server within one (1) hour of receipt of such notification, ensuring that historical access audit details of such Application User shall not be deleted or lost. If Supplier fails to make such a removal of access, DMAS shall not be held liable for any charges or damages incurred due to use of the unauthorized USERID.

d). DMAS of this Contract agree to notify Supplier of any degradation, potential breach, or breach of the Content and Application privacy or security as soon as possible after discovery. DMAS further agree to provide Supplier the opportunity to participate in the investigation of the reported situation.

e). DMAS agrees to submit any required Security exceptions to commonwealthsecurity@vita.virginia.gov within five (5) days of DMAS notification to VITA.

20. CONTENT PRIVACY AND SECURITY

Supplier shall provide a secure environment for Content and any hardware and software, including servers, network and data components provided by Supplier as part of its performance under this Contract. Supplier shall provide a secure environment for Content and any hardware and software in accordance with VITA'a Security Standards located at: https://www.vita.virginia.gov/it-governance/itrm-policies-standards/ in order to prevent unauthorized access to and use or modification of, and to protect, the Application and Content. Supplier agrees that all Content of DMAS

is intended solely for the business of DMAS and is considered private data. Therefore, Supplier shall, at a minimum, implement the following procedures designed to protect the privacy and security of Content:

i. User identification and access controls designed to limit access to Content to Application Users in accordance with the principles of least privilege.

ii. Supplier shall ensure that all personnel with physical or logical access to Content will receive industry standard annual security awareness training and all other training as required by Content owner, commonwealth security standards, regulation, or law.

iii. Supplier shall ensure that the Application and/or Licensed Services are capable of auditing the following events. Successful and unsuccessful account logon events, account management events, object access, policy change, privilege functions, process tracking, and system events.

iv. Supplier shall ensure that the Application and/or Licensed Services are capable of auditing the following events, for Web applications. All administrator activity, authentication checks, authorization checks, data deletions, data access, data changes, and permission changes.

v. Supplier shall ensure that the Application and/or Licensed Services employs automated mechanisms to centrally review, analyze and correlate audit and log records from multiple components of the Application and/or Licensed Services to support organizational processes for investigation, alerting and response to suspicious activities.

vi. Supplier shall ensure that the Application and/or Licensed Services support exporting of log files to the commonwealth for review and analysis.

vii. Supplier shall ensure that the Application and/or Licensed Services are capable of maintaining all audit records in accordance with commonwealth record retention policies found at the following URL. http://www.lva.virginia.gov/agencies/records/.

viii. Provide evidence of a comprehensive continuous monitoring program encompassing all systems with access to Content.

ix. Provide evidence that the Application and/or Licensed Services adhere to a security baseline, which is based on least functionality.

x. Supplier shall ensure that all changes to proposed Application and/or Licensed Services are authorized according to change management policies.

xi. Supplier agrees to maintain all metadata associated with any original Content submitted into the Application and/or Licensed Services by DMAS for easy retrieval and access, using secure industry standard protocols, within a predefined period as specified in the Contract documents.

xii. Supplier agrees to provide a secure method of exporting Content when requested.

xiii. Supplier shall ensure that the Content exported from the supplier's Application or infrastructure is in an industry standard format that provides for interoperability and portability.

xiv. Supplier shall ensure that the Application and/or Licensed Services provides and maintain a backup of Content that can be recovered in an orderly and timely manner within a predefined frequency consistent with recovery time and recovery point objectives, as specified in the Contract documents.

xv. Supplier shall ensure that the Application and/or Licensed Services can store a backup of Content, at least daily, in an off-site "hardened" facility, located within the continental United States, maintaining the security of the Content.

xvi. Implement a contingency plan designed to maintain the access to the Application and/or Licensed Services and to prevent the unintended destruction or loss of Content. This plan should provide a predefined frequency, consistent with recovery time and recovery point objectives, as specified in the Contract documents, for disaster recovery and archival purposes of Content at a secure facility located within the continental United States.

xvii. Supplier shall partition, in aggregate for this contract, all Content submitted into the Application and/or Licensed Services by DMAS in such a manner that it will not be impacted or forfeited due to E-discovery, search and seizure or other actions by third parties obtaining or attempting to obtain

records, information or Content for reasons or activities that are not directly related to the business of DMAS.

xviii. Service must support multi-factor authentication for access to any administrative portal and/or any remote administrative interface.

xix. Supplier shall fully cooperate with commonwealth incident response resources and all required law enforcement personnel for assistance in the handling and reporting of security incidents.

xx. Supplier shall maintain an incident response program that implements incident handling for security incidents that includes preparation, detection and analysis, containment, eradication, and recovery processes.

xxi. Incident response must have the capability to support automated mechanisms for supporting incident handling processes.

xxii. Supplier shall provide the capability to document incidents and investigations in the commonwealth's incident handling system.

xxiii. Supplier shall provide quarterly summary reports of Intrusion Detection System (IDS) and Intrusion Prevention System (IPS) events to: enterpriseservices@vita.virginia.gov.

xxiv. Supplier ensures that all Content is removed or destroyed in accordance with and/or exceeding the requirements of the commonwealth Data Removal standard located at the following URL. https://www.vita.virginia.gov/it-governance/itrm-policies-standards/.

xxv. Supplier shall support physical security measures, including securing all Content on a secure server, in locked data cabinets within a secure facility located within the continental United States.

xxvi. Supplier shall ensure that access to facilities housing Content or supporting applications are restricted to only allow access to Supplier's personnel and agents who have a need to know in connection with operation and support of the Application and/or Licensed Services.

xxvii. Supplier shall ensure that notification is sent to DMAS in writing thirty (30) days prior to its intention to replace or add any third-party that will be provided access to Content whether that access is provided by Supplier or Supplier's subcontractors. DMAS may reject any additional or new third parties who may be provided access to Content.

xxviii. Supplier shall ensure that the Application and/or Licensed Services operating systems, middleware, applications, and interfaces will be scanned for vulnerabilities every 30 days and scanning reports be provided to DMAS as required by commonwealth security standards.

xxix. Supplier shall cooperate with the commonwealth to allow monthly vulnerability scans against all public-facing interfaces with access to commonwealth data.

xxx. Application and/or Licensed Services must have the capability to set affinity on tiered systems. Supplier ensures that no one hypervisor can host the application and the data storage.

xxxi. Supplier shall ensure that all Content is stored, processed and maintained within the continental United States at all times.

xxxii. Supplier shall report the exact geographic location of all commonwealth data at all times if that Content is not stored in a commonwealth facility. Supplier shall provide a report to confirm the exact geographic location of any Content not stored in a commonwealth facility every 30 days.

xxxiii. Supplier shall, at all times, remain compliant with the privacy and security requirements mandated by federal, state and local laws and regulations.

xxxiv. Supplier shall ensure performance of an AICPA SOC-2 (Type 2) audit at least once annually of the Application's environment. Upon request from the DMAS and/or VITA, Supplier shall provide a non-redacted copy of current AICPA SOC-2 (Type 2) audit. Supplier shall assist DMAS/VITA in obtaining the current AICPA SOC-2 (Type 2) audit report from any third-party providing services to Supplier, if said third-party services involve the processing or storage of any Content. The Trust Service Principles that should be covered in the SOC -2 Type 2 are: Security, Availability, Processing Integrity, Privacy and Confidentiality.

xxxv. Supplier understands that DMAS/VITA or a third-party audit organization is responsible for performing a security audit within 90 days after contract award to determine control gaps between the

supplied audit and the Hosted Environment Information Security Standard (SEC525). If no audit is supplied, a complete security controls audit utilizing SEC525 must be performed. Failure to do so may result in remedies being levied as provided in the terms and conditions of the Contract.

xxxvi. Supplier shall ensure that external connections incorporated into the Application and/or Licensed Services have appropriate security controls including industry standard intrusion detection and countermeasures that will detect and terminate any unauthorized activity prior to entering the firewall maintained by Supplier.

xxxvii. Supplier shall ensure that the Application and/or Licensed Services will utilize industry standard firewalls regulating all data entering the internal data network from any external source which will enforce secure connections between internal and external systems and will permit only authorized data to pass through.

xxxviii. Supplier shall ensure that the Application and/or Licensed Services will use industry standard encryption techniques to protect Content that is transmitted or stored on behalf of the commonwealth. Supplier shall ensure that the Application will provide for the commonwealth to maintain exclusive control of all encryption keying material.

xxxix. Supplier shall ensure that they will apply all security updates to their systems as required by commonwealth security standards. For third-party hosted systems, updates should be installed in compliance with SEC 525. Systems hosted by the commonwealth should have updates installed in compliance with SEC 501. Please refer to the following link for the above mentioned commonwealth security standards: https://www.vita.virginia.gov/it-governance/itrm-policies-standards/.

xl. Supplier shall ensure that they will utilize industry standard malware protection, incorporating both signature and non-signature-based detection mechanisms, on all systems with access to Content.

xli. Supplier shall ensure that malware protection will be centrally managed and receive regular automatic updates to malicious code protection mechanisms and data files from the software vendor.

xlii. Within fifteen (15) business days after the expiration or termination of this Contract, Supplier shall confirm in writing to DMAS and VITA that all Content has been removed from all systems where the Content resided during performance of this Contract in a manner that complies with the Business Associate Agreement and complies with and/or exceeds the commonwealth Data Removal standard located at the following URL: https://www.vita.virginia.gov/it-governance/itrm-policies-standards/. The written confirmation shall include (a) sufficient detail describing the processes and procedures used in removing the Content, (b) information about the locations of where it was removed from within the Application and storage and other locations, and (c) the date the removals were performed. All metadata, in its original form, shall be returned to DMAS.

xliii. Regular training for Supplier personnel regarding the security and data recovery programs referenced in this Section.

xliv. Regular testing of the systems and procedures outlined in this Section; and

xlv. Audit controls that record and monitor Application and Licensed Services activity continuously.

xlvi. Should Supplier fail to perform in compliance with any provision of this Section, DMAS may provide Supplier with a written notice to cure. Supplier shall have fifteen (15) days to cure its noncompliance, or with agreement from DMAS and VITA, in its governance role, may request a reasonable extension for time to cure providing DMAS, and a copy to VITA at: enterpriseservices@vita.virginia.gov, with a written plan of action to cure. If Suppler fails to cure, DMAS may deem Supplier in breach and/or default of the Contract and may immediately terminate the Contract, in whole or in part. Upon such termination, neither the Commonwealth, nor DMAS nor DMAS shall have any future liability except DMAS will be responsible for deliverables accepted by DMAS and Licensed Services rendered to DMAS by Supplier. In the event of such termination, 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 for any unused, remaining term paid for in advance by DMAS for the Licensed Services up to the date of such termination. Supplier agrees that DMAS may pursue all remedies provided under law in the event of a breach or threatened breach of this Section, including reprocurement or transition costs or injunctive or other equitable relief.

21. PROPRIETARY RIGHTS

A. SUPPLIER'S PROPRIETARY RIGHTS

Except as otherwise stated herein, the Licensed Services (including without limitation, the Application and Updates, and Supplier Product, except to the extent that Supplier Product contains Content) and Documentation are the sole and exclusive property of Supplier and its licensors. All modifications, enhancements, Updates, and translations of the Licensed Services shall be deemed a part thereof.

B. DMAS REQUIREMENTS AND LICENSE RESTRICTIONS

Except as otherwise provided in this Contract or as provided by law:

i). DMAS will use commercially reasonable efforts to ensure that Application Users comply with all of the terms and conditions hereof;

ii). DMAS shall not reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from any of the software comprising or in any way making up a part of the Application;

iii). DMAS shall not directly or indirectly copy or reproduce all or any part of the Application, whether electronically, mechanically or otherwise, in any form including, but not limited to, the copying of presentation, style or organization, without prior written permission from Supplier; provided, however, DMAS may reproduce and distribute any Application output generated from the relevant DMAS Content, and an Application User may reproduce and distribute any Application output generated pursuant to the permissions set forth in DMAS' order or SOW;

iv). DMAS shall not rent, lease, sublicense, resell for profit, loan, distribute, network or modify the Application or Supplier Product or any component thereof, provided as part of the Licensed Services, except as otherwise authorized by Supplier. However, DMAS may reproduce and distribute any Application output (e.g., reports) generated by DMAS using the Application, and an Application User may reproduce and distribute any reports or output generated by the Application User using the Application and pursuant to the permissions in DMAS' order or SOW;

v). DMAS shall only use the Application and Supplier Product in the normal course of business, in connection with, and as part of, the Licensed Services;

vi). DMAS shall not attempt to gain unauthorized access to the Application or Licensed Services, other user accounts, computer systems or networks connected to the Licensed Services;

vii). DMAS shall not remove, obscure or alter Supplier's proprietary notices, disclaimers, trademarks, or other proprietary rights notices of any kind affixed or contained in the Application or Licensed Services or any written or electronic report, output or result generated in connection with the Licensed Services;

viii). DMAS shall take reasonable care not to, and shall not intentionally or knowingly, use the Application to post, transmit, distribute, store or destroy any information: (i) in violation of any applicable law, statute, ordinance or regulation; (ii) in a manner that shall infringe the intellectual property rights of others; (iii) that is defamatory or trade libelous, or (iv) that contains any Computer Viruses;

ix). DMAS shall not use the Application or Licensed Services for any illegal, obscene, offensive or immoral purpose.

C. DMAS PROPRIETARY RIGHTS

Except as otherwise stated herein and with the exception of any applicable third-party rights, Content and any customizations made for DMAS' operation of the Application or for interoperability with other DMAS' systems or applications paid for by DMAS, are and shall remain the sole and exclusive property of DMAS, including all applicable rights to patents, copyrights, trademarks, trade secrets or other proprietary property rights thereto. Additionally, all right, title and interest in and to any Content or customizations relating to DMAS' business shall remain the property of DMAS, whether or not supplied to Supplier or uploaded into the Application. Nothing in this Contract shall be construed as conveying any rights or interest in Content or customizations to Supplier. Upon termination of an order or SOW issued hereunder, Supplier agrees to either provide the Content and customizations to DMAS, or, at DMAS' request, certify in writing that said Content and customizations in all formats, have been destroyed.

22. CLOUD SERVICES ESCROW AGREEMENT

A. APPLICATION ESCROW AGREEMENT

Supplier is providing a General Use or COTS Application and no custom built source code is authorized under this Contract or any order or SOW issued thereunder. Therefore, Application Escrow is not required."

B. CONTENT ESCROW AGREEMENT

Throughout the Contract Term, Supplier shall make available such resources, including Supplier Personnel, as are reasonably required to: (i) train designated DMAS personnel in the use of the Application; (ii) develop modifications to the Application as agreed by DMAS and Supplier in any exhibit hereto or as agreed to by Supplier and DMAS in any order or SOW issued hereunder; and (iii) otherwise support the Application as provided under this Contract and any exhibits hereto.

Supplier shall maintain, in a separate escrow account for DMAS, copies of all Content provided by or to DMAS in an agreed upon industry standard portable format accessible without use of Supplier's Application. DMAS agrees to pay all expenses associated with establishing and maintaining the escrow accounts and the contents mentioned above. The Content Escrow Agreement shall be executed prior to DMAS providing to Supplier written notice of Acceptance upon completion of successful Acceptance testing.

23. FEES, ORDERING, AND PAYMENT PROCEDURE

A. FEES AND CHARGES

In consideration for the Supplier's performance obligations under this Contract, DMAS shall pay Supplier the fee(s) owed pursuant to the schedule of fees and charges as set forth on Exhibit B attached to this Contract. Supplier will only be entitled to those fees owed for Supplier's performance obligations and any additional Products and Services provided to DMAS in accordance with the scope of this Contract and the Requirements, as authorized by Exhibit A, and per DMAS' order or SOW. The fees, and any associated discounts, will be applicable throughout the Contract Term unless modified pursuant to the terms and conditions below.

In the event the fees or discounts apply for any period less than the entire Term, Supplier agrees that it will not request an increase in the fees during the first twelve (12) month period following the Effective Date and will not request an increase in the fees more than once in any subsequent twelve (12) month period thereafter. No increase in fee amounts will 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 period ending 60 to 90 days prior to the effective date of the increase compared with the same index one (1) year prior. Supplier and DMAS will work in good faith to agree on an appropriate change in pricing. Supplier must submit any change in price in writing to DMAS if the change impacts any order or SOW and in accordance with the above and will not become effective for 60 calendar days thereafter. Supplier agrees to offer price reductions to ensure compliance with the "Competitive Pricing" section of this Contract below.

B. REPRODUCTION RIGHTS FOR SUPPLIER PROVIDED SOFTWARE

At DMAS' request, Supplier shall provide DMAS with a reproducible, portable data storage device (e.g. USB flash drive) of Software and Updates. DMAS will be responsible for making copies and distributing the Software and Updates as required. Within 30 calendar 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 or Updates or both deployed during the quarter. Supplier will invoice DMAS for the net number of new licenses reported as deployed.

C. DEMONSTRATION AND/OR EVALUATION

If the Supplier's contractual obligations include the provision of a Solution, an Application and Licensed Services, or Software-as-a-Service, at the request of DMAS, then Supplier shall perform any reasonable demonstration of its Solution, Application and Licensed Services, or Software-as-a Service at DMAS location and at no charge.

If the Supplier's contractual obligations include the provision of Software, then the Supplier shall provide the Software to DMAS for evaluation purposes at no charge. The evaluation period will be determined by the complexity of testing but will be a period not less than 30 calendar days.

Each new project is entitled to an evaluation copy regardless of whether DMAS has previously purchased the Software.

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F. ORDERING

Supplier shall not accept any order from DMAS if the 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 Nonprocurement Programs.

DMAS has the right to license or purchase Supplier's Products or Services under this Contract, but has no obligation to purchase or license from Supplier any of Supplier's Products or Services. DMAS may, at their sole discretion, purchase, license or otherwise receive benefits from third party suppliers of products and services similar to, or in competition with, the Products and Services provided by Supplier.

Supplier shall accept any order or SOW placed by DMAS through the Commonwealth's electronic procurement website portal, eVA (http://www.eva.virginia.gov/). DMAS must order through eVA.

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H. INVOICE PROCEDURES

Supplier shall remit each invoice via email to the DMAS mailbox bcminvoices@dmas.virginia.gov, promptly after all Supplier's performance obligations/Solution, Solution Component(s), or Services have been accepted and in accordance with the milestone payment schedule, if any, in the Contract documents. Payment for any support services, as authorized in the Contract, will be monthly in arrears unless otherwise stated in this Contract. No invoice may include any costs other than those identified in the signed Contract, and those costs must be in accordance with the schedule of fees listed on Exhibit B. Without limiting the foregoing, all shipping costs are the Supplier's responsibility except to the extent shipping charges are identified in Exhibit B. Supplier shall issue invoices that identify, at a minimum:

i. Dates/periods that invoice covers, including any service or subscription periods, as applicable.

ii. Line item description of the Deliverable(s) applicable to this Contract, including any components or service type, and, if applicable, the project milestone.

iii. Quantity, charge and extended pricing for each line item

iv. Applicable date of the order or SOW or both

v. This Contract number and the applicable order number or SOW number or both

vi. Supplier's Federal Employer Identification Number ("FEIN")

v.ii Other information as requested by the Department.

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

I. PURCHASE PAYMENT TERMS

Supplier is responsible for the accuracy of its billing information. Supplier may not issue invoices pursuant to this Contract until all of Supplier's performance obligations have been accepted and are in accordance with the milestone payment schedule in the Contract documents, or until after services have been rendered. Charges for Deliverables, Components or Services accepted more than 90 calendar days prior to receipt of a valid invoice may not be paid. In the event Supplier repeatedly over-bills DMAS, DMAS may assess a one percent (1%) charge for the amount over-billed for each month that such over-billing continues.

J. REIMBURSEMENT OF EXPENSES

DMAS shall pay, or reimburse Supplier, for all reasonable and actual travel-related expenses for greater than 30 miles from portal to portal incurred by Supplier during the relevant period. DMAS will only be liable to pay for Supplier's travel-related expenses, including transportation, meals, lodging and incidental expenses, that have been authorized by DMAS in advance per the Contract documents. The travel-related expenses will be reimbursable at the then-current per

diem amounts and other travel regulations as published by the Virginia Department of Accounts (http://www.doa.virginia.gov/). DMAS who are not public bodies may have their own per diem amounts or other travel regulations applicable to Supplier's pre-approved travel expenses.

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.

K. DISPUTED CHARGES

If, before payment of an invoice, DMAS notifies the Supplier in writing of a disputed charge, DMAS will have the right to withhold payment of the disputed amount until the dispute is settled or finally resolved. Supplier shall respond in writing to DMAS' notification of a disputed charge acknowledging Supplier's receipt of the dispute within five (5) business days. Any charges disputed by DMAS will be resolved (whether by credit or explanation of the charge to DMAS' satisfaction) in DMAS' required format within two (2) billing cycles (60 calendar days) following DMAS' written notification. In the absence of the Supplier's written evidence identifying the merit of the disputed amounts, DMAS will not be obligated to pay the disputed amounts and may consider the matter concerning the specific identified amounts closed. DMAS will not pay any disputed amounts that remain unresolved after 120 calendar days. If a disputed charge is reversed, Supplier shall reverse all associated surcharges, regulatory charges and taxes.

24. REPORTING

Supplier shall submit to DMAS a monthly report containing data on Small Business Procurement and Subcontracting Spend.

This report must be submitted in accordance with the instructions and further detailed requirements detailed by the Department to the following email address dmas-conmgmt@dmas.virginia.gov, and using the Supplier's eVA account, or any successor mailbox or method communicated by the Department. Supplier will also be required to report SWaM expenditures via eVA. Supplier's failure to comply with all reporting, payment, and other requirements in this section may be deemed by DMAS/VITA, in each's sole discretion, to be a breach of the Contract.

A. SMALL BUSINESS PROCUREMENT AND SUBCONTRACTING SPEND

Supplier shall provide to DMAS a report of monthly subcontracting spend data. This data must include Supplier's total spend to all Subcontractors who provide direct performance for obligations under this Contract. Supplier's monthly subcontracting spend data must be submitted via the SRS webpage located at: http://vita2.virginia.gov/procurement/srs/.

In addition, every six (6) months following the Effective Date, Supplier shall submit to DMAS a "SWaM Subcontracting Certification of Compliance" ("SSCC") certifying that Supplier has fully complied with the Contract's Supplier Procurement and Subcontracting Plan ("Plan"). A copy of Supplier's Plan is attached to this Contract as Exhibit H, and is incorporated by reference. The SSCC must include a written explanation of any variances of greater than 20% between the Plan and the actual subcontractor spend by Supplier. Supplier's SSCC will be maintained by DMAS in the Supplier's procurement file. Supplier must submit the SSCC to the following address: dmas-conmgmt@dmas.virginia.gov. In the event that Supplier fails to comply with its contractually obligated Plan spend or fails to report its contractually obligated Plan spend, DMAS may, at its sole discretion, prohibit or delay any renewals or extensions of the Contract, withhold any final payments due, or both. Supplier's failure to comply will be considered in the prospective award of any future contracts with Supplier.

25. SUPPLIER PERFORMANCE MEASURES

DMAS has developed a set of performance measures relating to Supplier's performance under this Contract and which are attached hereto and incorporated by reference as Exhibit I. Supplier agrees to be bound by and perform its obligations under this Contract pursuant to these performance measures. The remedies for Supplier's failure to meet the performance measures are set forth in Exhibit I.

Supplier and DMAS agree to meet within 30 calendar days of the Effective Date of this Contract to set forth the methodology and designated personnel of each Party to provide, collect, monitor, and report the performance measures data and mutually agreed-to incentives and remedies. Supplier agrees to

provide to DMAS a report of its performance against the performance measures no less than once every six (6) months throughout the Contract Term. Supplier's report must include a comparison of its performance measures against the agreed-to targets and, in the event of any shortfall by Supplier, proposed remediation measures. Supplier will report its performance for the Contract in aggregate. Any instances of Supplier non-compliance will be recorded in Supplier's Contract file and shared with Contract stakeholders. Supplier further agrees that any degradation or failure of Supplier's performance obligations may result in failure to renew the Contract, termination for convenience of the Contract or termination for breach of the Contract. DMAS will have all rights and remedies available at law.

26. STATUS MEETINGS

Supplier will be prepared to conduct monthly 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.

27. 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 any scheduled 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 will ensure the availability of the appropriate personnel to meet with DMAS contract management team. Additional Steering Committee meetings involving representatives from DMAS, the Supplier, and DMAS may be required prior to or during performance on any specific SOW issued pursuant to this Contract.

28. POLICIES AND PROCEDURES GUIDE

Within 30 calendar 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, is to be measured. The guide will provide process diagram details, working activities, and interface points with DMAS and Supplier deliverables. Updated versions of the guide will be provided by Supplier to DMAS every six (6) months during the Term, including any extensions, of the Contract.

29. TRAINING AND DOCUMENTATION

A. TRAINING

B. SUPPLIER SHALL PROVIDE TRAINING AS REQUIRED IN THE RFP, DESCRIBED IN THE SUPPLIER'S TECHNICAL PROPOSAL IN EXHIBIT A – REQUIREMENTS, AND PRICED ACCORDINGLY IN EXHIBIT B. DOCUMENTATION

Supplier shall deliver to DMAS complete copies of any Documentation applicable to the Deliverable(s) provided to DMAS, in a quantity and media format as agreed upon by the Parties. Should Supplier revise or replace the Documentation, or should Documentation be modified to reflect Updates, Supplier shall deliver to DMAS copies of the updated or replacement

Documentation, in the same quantity and media format as originally requested by DMAS, or as agreed upon between the Parties. DMAS will 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 must include, but is not 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 must be revised to reflect any modifications, fixes or updates made by Supplier. DMAS, at its own discretion, will have the right, as part of the license granted by Supplier, to modify or completely customize all or part of the Documentation in support of the authorized use of the licensed Application or Software. DMAS may also duplicate such Documentation and include it in DMAS' document or platform. DMAS shall continue to include Supplier's copyright notice.

30. DMAS SELF-SUFFICIENCY

At DMAS' request, and pursuant to an order or SOW for Supplier's Services issued under this Contract, Supplier shall provide all assistance reasonably required by DMAS to develop DMAS' self-sufficiency in operating and managing any combination of the Solution, Software, Products, or Services that Supplier provided to DMAS under the applicable order or SOW. During 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

31. COMPETITIVE PRICING

Supplier warrants that each of the prices, charges, economic or product terms, or warranties granted under this Contract are fair, reasonable, and commensurate with the price, charge, economic or product term or warranty being offered by Supplier to other government customers that purchase substantially similar services or products, at similar volumes, and under substantially similar terms and conditions. Supplier shall notify DMAS of any new services or products that become generally available to all government customers during the Contract Term. New products and services are subject to the commercial terms associated with those products and services and must be formally added to this Contract before they can be purchased. Supplier shall also offer DMAS commercially available national government products and services promotions and rates available at the time of purchase under the terms of those promotions.

32. 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 the other Party's Confidential Information to any third-party.

DMAS may, however, disclose the Confidential Information as delivered by Supplier to subcontractors, contractors, or agents of DMAS that are bound by non-disclosure agreements with DMAS. Each Party shall take the same measures to protect against the disclosure or misuse of the Confidential Information as it takes to protect its own proprietary or confidential information, but in no event will such measures be less than reasonable care.

B. RETURN OR DESTRUCTION

Upon the termination or expiration of this Contract, or upon the earlier written request of the disclosing DMAS, Supplier shall, at its own expense, and at the election of DMAS, either:

i. promptly return all tangible Confidential Information (and all copies thereof except the record required by law) to the disclosing DMAS; or

ii. destroy any Confidential Information in Supplier's possession or control, and provide the disclosing DMAS with written certification of the destruction.

Additionally, Supplier shall 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's records retention policies or, if DMAS is not subject to the Commonwealth's policies, in accordance with DMAS' own records retention policies.

C. CONFIDENTIALITY STATEMENT

All Supplier Personnel performing Services pursuant to this Contract are required to sign a confidentiality statement or non-disclosure agreement. Any violation of the statement or agreement will be deemed a breach of this Contract and may result in termination of the Contract or any order or SOW issued hereunder.

D. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

Supplier shall comply with all applicable provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and, as applicable to the performance of this Contract. Supplier shall:

i. not use or further disclose Protected Health Information ("PHI") other than as permitted or required by the terms of this Contract or any order or SOW issued hereunder or as required by law;

ii. use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this Contract or any order or SOW issued hereunder;

iii. report to DMAS, as applicable, any use or disclosure of PHI not provided for by this Contract;

iv. mitigate any harmful effect that is known to the Supplier of a use or disclosure of PHI by the Supplier or Supplier Personnel in violation of the requirements of this Contract;

v. impose the same requirements and restrictions contained in this provision on Supplier Personnel performing on this Contract;

vi. provide access to PHI contained in its records to DMAS, in the time and manner designated by DMAS, or at the request of DMAS, to an individual in order to meet HIPAA access; and

vii. make available PHI in its records to DMAS for amendment and incorporate any amendments to PHI in its records at DMAS' request.

E. FREEDOM OF INFORMATION ACT ACKNOWLEDGEMENT

All Supplier documents now or later comprising the Contract may be released in their entirety under the Virginia Freedom of Information Act, and Supplier agrees that any confidentiality or similar stamps or legends that are attached to any future documents or information may be ignored to the extent they claim confidentiality beyond that permitted by the Virginia Freedom of Information Act.

F. BUSINESS ASSOCIATE AGREEMENT

The Supplier 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 H (BAA). The Supplier/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 Supplier/Contractor shall keep abreast of any future changes to the regulations. The Supplier/Contractor shall comply with all current and future HIPAA regulations and other applicable 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/about-us/procurements http://www.dmas.virginia.gov/Content_pgs/rfp.aspx .

33. INDEMNIFICATION

A. INDEMNIFICATION GENERALLY
Supplier shall defend, indemnify, and hold harmless all Commonwealth Indemnified Parties from and against any third-party Claims to the extent the Claims in any way relate to, arise out of, or result from:

i. any negligent act, negligent omission, or intentional or willful conduct of Supplier or any Supplier Personnel;

ii. a breach of any representation, warranty, covenant, or obligation of Supplier contained in this Contract;

iii. any defect in the Supplier-provided products or services;

iv. any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Supplier-provided products or services; or

v. any Claims by any Subcontractor resulting from Supplier's failure to pay such Subcontractor.

B. DEFENSE CLAIMS
Supplier will be solely responsible for all costs and expenses associated with the defense of all third-party Claims against Commonwealth Indemnified Parties. 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.

C. DUTY TO REPLACE OR REIMBURSE
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 products or services, or Supplier's performance, Supplier shall, at its expense and option, either (a) procure the right to continue use of such infringing products or services, or any components thereof; or (b) replace or modify the infringing products or services, or any components thereof, with non-infringing products or services satisfactory to DMAS.

In the event that DMAS cannot use the affected Deliverable, Product, Licensed Services, or Services, including any Components, then Supplier shall reimburse DMAS for the reasonable costs incurred by DMAS in obtaining an alternative product or service.

D. SUPPLIER DISPUTE OF OBLIGATION TO INDEMNIFY
If a Claim is commenced against any Commonwealth Indemnified Parties by a third party alleging an infringement of the third party's intellectual property rights and Supplier is of the opinion that the allegations in the third-party Claim, in whole or in part, are not covered by the indemnification provision in this Contract, then In the event that Supplier disputes any of its obligations to defend or indemnify any Commonwealth Indemnified Party, then Supplier shall immediately notify DMAS in writing and shall, nonetheless, take all reasonable steps to protect the rights, remedies, and interests of the Commonwealth Indemnified Parties in the defense of the Claim, including to 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.

34. LIABILITY

A. SUPPLIER LIABILITY
Supplier agrees that it is fully responsible for all acts and omissions of all Supplier Personnel, including their gross negligence or willful misconduct.

Except for liability arising from any combination of:

i. any intentional or willful misconduct, fraud, or recklessness of Supplier or any Supplier Personnel; or

ii. claims for bodily injury, including death, and damage to real property or tangible property resulting from the negligence of a Supplier or any Supplier Personnel,

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Supplier's indemnification obligations and liability shall not exceed, in aggregate, twice the value of the Contract. This limitation will apply on a per-incident basis; it being understood that multiple losses stemming from the same root cause constitute a single incident.

B. LIMITATION OF LIABILITY

Except for liability arising out of a Party's negligence or willful misconduct, neither Party will be liable to the 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 of these damages.

35. INSURANCE

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

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

Cyber Security Liability insurance coverage in the amount of $5,000,000 per occurrence.

36. SECURITY COMPLIANCE

Supplier shall comply with all provisions of the then-current Commonwealth security policies, standards, and guidelines published by VITA and which may be found at: https://www.vita.virginia.gov/policy--governance/itrm-policies-standards/, or any successor URL(s), as are pertinent to Supplier's operation. Further, Supplier shall comply with all applicable provisions of the DMAS' then-current security procedures as are pertinent to Supplier's operation and that have been provided to Supplier by DMAS. Supplier shall also comply with all applicable federal, state, and local laws and regulations.

Any unauthorized release of any Confidential Information, or Commonwealth proprietary or personal information, by the Supplier or Supplier Personnel constitutes a breach of Supplier's obligations under the Contract. Supplier shall notify VITA and DMAS within 24 hours of discovery of, or when Supplier should have discovered, any breach of "unencrypted" and "unredacted" personal information, as those terms are defined in Code § 18.2-186.6, and other confidential or personal identifying information provided to the Supplier by DMAS. To the extent permitted by law, Supplier shall provide DMAS the opportunity to participate in the investigation of the breach and to exercise control over reporting the unauthorized disclosure.

Supplier shall ensure performance of an audit of Supplier's environment at least annually to provide assurance of "Controls Relevant to Security, Availability, Processing Integrity, Confidentiality or Privacy" in accordance with the then-current standards set forth by the American Institute of CPAs.

Supplier shall indemnify, defend, and hold the Commonwealth, DMAS, their officers, directors, employees and agents harmless from and against any and all Claims, 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 reserves the right to review Supplier's information security program prior to the commencement of Licensed Services and at least once annually during the Term of this Contract. During the performance of the Licensed Services, and on an annual basis, DMAS will be entitled, at its own expense, 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 shall implement any reasonably required safeguards as identified by any program audit.

37. IMPORT/EXPORT

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

38. ACCEPTABLE USE POLICY

DMAS agree to abide by Supplier's Acceptable Use Policy (AUP), as amended by the parties hereby and incorporated as Exhibit G. Because certain standard clauses that may appear in, or be incorporated by reference into, Supplier's standard AUP cannot be accepted by DMAS, and in

consideration of the convenience of using that form, and this form, without the necessity of specifically negotiating a separate contract document, the parties hereto specifically agree that:

i. In the event of a conflict between this Contract and the AUP, the Contract shall control;

ii. In the event of a material, unilateral revision to the AUP by Supplier that substantially impairs the ability of DMAS or any other public body from its lawful use of the Service, DMAS shall have the option to;

a. request that the revision be rescinded;

b. request that the revision be waived as to DMAS or other public bodies receiving Services under this Agreement;

If Supplier fails to a grant a request by DMAS per a. or b. above, within 30 days of receiving the request, then DMAS may, at its option, terminate this Contract, in whole or in part, or any order or SOW, in whole or in part, without termination liability;

iii.

> **Commented [AK(6):** Note to Suppliers: Other provisions may apply once DMAS reviews the AUP submitted with the proposal, if there is an AUP. The numerette serves as a placeholder.

39. THIRD PARTY TERMS AND CONDITIONS
In the event that Supplier's provision of the Licensed Services or any performance obligations under the Contract, or any order or SOW issued under the Contract, include third-party terms and conditions, the Commonwealth security policies standards and guidelines referenced in this Contract above – i.e., SEC501 and SEC525 - will take precedence over any third party terms and conditions. For the purposes of statutory law as referenced and incorporated in this Contract, if there is any conflict with any third party terms, such statutory law will govern.

40. 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 15 business days, then DMAS may immediately terminate this Contract, and DMAS may terminate an order or SOW, on notice to Supplier unless Supplier immediately gives DMAS adequate assurance of the future performance of this Contract. If this Contract has not been otherwise terminated and bankruptcy proceedings are commenced with respect to Supplier, then DMAS may suspend all further performance of this Contract until Supplier assumes this Contract and provides adequate assurance of its performance of Supplier's contractual obligations 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 suspension of further performance by DMAS pending Supplier's assumption or rejection will not be a breach of this Contract, and will not affect the rights of DMAS to pursue or enforce any of its rights under this Contract or otherwise.

41. GENERAL PROVISIONS

A. RELATIONSHIP BETWEEN DMAS AND SUPPLIER
Supplier has no authority to contract for, bind or commit 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 will Supplier, or any Supplier Personnel, hold itself out as or be considered an agent or an employee of DMAS, and DMAS will not have any duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or any Supplier Personnel. 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 for Supplier any federal, state, or local employment taxes, including, but not limited to, income tax withholding and social security contributions. Supplier shall pay or withhold 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. Supplier shall reimburse DMAS in the event that any taxes, interest or penalties are assessed against and paid by DMAS as a result of this Contract.

B. LICENSING WITHIN THE COMMONWEALTH
Any and all licenses granted or provided pursuant to this Contract, whether to Work Product, System Software, COTS Software, or any other Software will be held by:

i. the Commonwealth as DMAS is as defined by Code § 2.2-2006 or a legislative, judicial and independent DMAS of the Commonwealth, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code;

C.   INCORPORATED CONTRACTUAL PROVISIONS
In addition to the terms, conditions, and obligations of this Contract, Supplier agrees to VITA "Mandatory Contract Terms" which consist of VITA:

- • "Core Contractual Terms";

- • "Required eVA Terms and Conditions"; and

- • "Mandatory Internal Revenue Service (IRS) Publication 1075 (required for FTI data only)"

Each of these Mandatory Contract Terms are set forth at the following URL and incorporated into this Contract by reference: https://www.vita.virginia.gov/procurement/contracts/mandatory-contract-terms/.

Supplier agrees that non-compliance with the above-referenced Mandatory Contract Terms and IRS Publication 1075, including Exhibit 7 of IRS Publication 1075 which is incorporated by reference, may be deemed, solely by DMAS, as a material breach of the applicable Order or SOW or of the Contract. Supplier is responsible for verifying the correct and current version of this IRS publication and related safeguarding terms language and acknowledges that DMAS will be held harmless.

The terms and conditions set forth in documents posted at the URL above, and any successor URL(s), are subject to change pursuant to action by the legislature of the Commonwealth, change in DMAS policy, adoption of revised eVA business requirements, or change to IRS Publication 1075. If a change is made to any of the Mandatory Contract Terms documents, a new effective date will be noted in the applicable document title. Supplier is advised to check the URLs, or their successors, periodically.

D.   COMPLIANCE WITH THE FEDERAL LOBBYING ACT
Supplier's signed certification of compliance with 31 U.S.C.§ 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 is incorporated as Exhibit G to this Contract.

E.   ETHICS IN PUBLIC CONTRACTING
By signing this Contract, Supplier warrants that its assent to this Contract is made without collusion or fraud, and that Supplier has not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with their proposal or the terms of this Contract. Further, Supplier warrants that it has not conferred any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, on any public employee having official responsibility for this procurement transaction, unless consideration of substantially equal or greater value was exchanged. In addition, Supplier warrants that it will notify DMAS if it becomes aware of a potential conflict of interest in the future.

F.   GOVERNING LAW
This Contract is governed by and will be 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 relating to this Contract must 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. The Uniform Computer Information Transactions Act applies to this Contract only to the extent required by Code § 59.1-501.15.

G.   DISPUTE RESOLUTION
In accordance with Code § 2.2-4363, contractual claims, whether for money or other relief, must be submitted in writing to the public body from whom the relief is sought no later than 60 calendar 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 will not delay payment of amounts agreed due in the final

payment. The relevant public body shall render a final decision in writing within 30 calendar days after its receipt of the Supplier's written claim.

The Supplier may not invoke any available administrative procedure under the Code 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 30 calendar days. The decision of the relevant public body will 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 Code § 2.2-4364 or the administrative procedure authorized by Code § 2.2-4365.

In the event of any breach by a Commonwealth agency, Supplier's remedies will be limited to claims for damages and interest allowable under the Code and, if available and warranted, equitable relief. All such claims to be processed pursuant to this Section. In no event will Supplier's remedies include the right to terminate any license or support services hereunder.

H.   ASSIGNMENT
This Contract is binding upon and will 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 under this Contract, to any entity without the prior written consent of DMAS, and any attempted assignment or subcontracting without consent will 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 will be 30 calendar 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 will not be covered by this assignment.

I.   SEVERABILITY
Invalidity of any term of this Contract, in whole or in part, will 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.

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

K.   FORCE MAJEURE
No Party will be responsible for the delay or failure to meet its obligations under this Contract if the delay or failure arises from causes beyond the reasonable control and without the fault or negligence of the obligated Party. If any performance date under this Contract is postponed or extended pursuant to this Section for longer than 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, and in addition DMAS may terminate any order or SOW affected by such postponement or delay.

L.   NO WAIVER
Any failure to enforce any terms of this Contract will not constitute a waiver.

M.   REMEDIES

N.   THE REMEDIES SET FORTH IN THIS CONTRACT ARE INTENDED TO BE CUMULATIVE. IN ADDITION TO ANY SPECIFIC REMEDY, DMAS RESERVES ANY AND ALL OTHER REMEDIES THAT MAY BE AVAILABLE AT LAW OR IN EQUITY. 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, annual service organization control (SOC) reports in accordance with AICPA standards, fee schedules, documents, papers, and records of the Supplier required to verify Supplier's

performance, or any subcontractor's performance, under this Contract. 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, subject to Section 20 of this Contract.

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.

O. 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 Supplier's 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.

P. TAXES

The Commonwealth is exempt from Federal excise and all State and Local taxes and any such taxes may not be included in Contract prices. Tax certificates of exemption, Form ST-12 can be obtained from DMAS upon request. Deliveries against this Contract shall be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

Q. CURRENCY

All prices, costs, or fees in this Contract and all exhibits, schedules, orders, or SOWs will be in United States dollars.

R. NON-DISPARAGEMENT

Each Party agrees that it shall not engage in any conduct or pattern of conduct that involves the making or publishing of written or oral statements or remarks (including without limitations, the repetition or distribution of derogatory rumors, allegations, negative reports or comments) which are disparaging, deleterious or damaging to the integrity, reputation or good name of any other Party or the Party's affiliates, employees, agents, contractors, or subcontractors. This section will not be construed to prevent a Party from responding publicly to incorrect public statements or

from making truthful statements when required by subpoena, court order, or otherwise required by law.

S. ADVERTISING AND USE OF PROPRIETARY MARKS
No Party may use the name of the other Party or refer to the other Party, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of the other Party. In no event may any Party use a proprietary mark of the other Party without receiving the prior written consent of the other Party.

T. NOTICES
Any notice required or permitted to be given under this Contract must be in writing and will 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:

i. To DMAS and to Supplier, if Supplier is incorporated or formed pursuant to the laws of the Commonwealth, to the addresses shown on the signature page.

ii. To Supplier, if Supplier is incorporated or formed outside the Commonwealth, to the address shown on the signature page and to the Registered Agent registered with the Virginia State Corporation Commission.

Pursuant to Title13.1 of the Code, DMAS or Supplier may change its address for notice purposes by giving the other Party 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, or signed, or both, 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.

U. 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 will be billed for 50% of the employee's annual salary in effect at the time of termination.

V. CONTRACT ADMINISTRATION
Supplier agrees that at all times during the Contract Term an account executive, at Supplier's senior management level, will be assigned and available to DMAS. Supplier reserves the right to change such account executive upon reasonable advance written notice to DMAS.

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

X. 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:

Exhibit A – Requirements (The Request for Proposal, Requirements Traceability Matrix, and Supplier's Proposal)

Exhibit B – Pricing (Cost Proposal and SWaM Documentation)

Exhibit C – Reserved

Exhibit D – Reserved

Exhibit E – Escrow Agreement

Exhibit F – End User Licensing Agreement (for reference only)

Exhibit G – Certification Regarding Lobbying

Exhibit H – Supplier Procurement and Subcontracting Plan

Exhibit I – Supplier Performance Measures

Exhibit H – Business Associate Agreement

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 of this Contract. Any and all terms and conditions contained in, incorporated into, or referenced by the Supplier's proposal are deemed invalid. . This Contract may only be amended by an instrument in writing signed by DMAS and Supplier.

Y. ORDER OF PRECEDENCE
In the event of a conflict, the following order of precedence shall apply: this Contract document,]Exhibit A, Exhibit B, Exhibit I, Exhibit H, then RFP and any addenda thereto. In the event of a conflict or inconsistency between the negotiated terms of this Contract and any provision incorporated by reference into the Contract (e.g., a section of a License Agreement), the negotiated terms of this Contract will take precedence. For purposes of this section, a "conflict" exists with respect to a subject that has been comprehensively addressed in the Contract when supplementary terms contained in a provision incorporated by reference would alter the rights and obligations of the Parties set forth in the Contract.

Z. COUNTERPARTS AND ELECTRONIC SIGNATURES

AA. SIGNATURES TRANSMITTED BY FAX OR ELECTRONIC MAIL (IN PORTABLE DATA FORMAT ("PDF")) ARE PERMITTED AS BINDING SIGNATURES TO THIS CONTRACT OPPORTUNITY TO REVIEW
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.

[SIGNATURE PAGE(S) TO FOLLOW]

Signed by the undersigned authorized representatives of DMAS and Supplier and effective as of the Effective Date set forth in the preamble of this Contract above.

SUPPLIER   **Department of Medical Assistance Services.**

By: _____   By: _____
    (Signature)   (Signature)

Name: _____   Name: _____
        (Print)   (Print)

Title: _____   Title: _____

Date: _____   Date: _____

Address for Notice: Address for Notice:

_____   _____

_____   _____

_____   _____

Attention: Supplier Contact   Attention: Contract Administrator