



COMMONWEALTH of VIRGINIA  
*Department of Medical Assistance Services*

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April 05, 2017

**MEMORANDUM**

TO: The Honorable Thomas K. Norment, Jr.  
Co-Chairman, Senate Finance Committee

The Honorable Emmett W. Hanger, Jr.  
Co-Chairman, Senate Finance Committee

The Honorable S. Chris Jones  
Chairman, House Appropriations Committee

Daniel Timberlake  
Director, Department of Planning and Budget

FROM: Cynthia B. Jones *Cynthia Jones*  
Director, Virginia Department of Medical Assistance Services

SUBJECT: Report on the Replacement of the Medicaid Management Information System – Contract  
Awarded to Magellan Medicaid Administration

The 2016 Appropriation Act, Chapter 780, 310 L, states:

*2. Within 30 days of awarding a contract or contracts related to the replacement project, the Department of Medical Assistance Services shall provide the Chairmen of the House Appropriations and Senate Finance Committees, and the Director, Department of Planning and Budget, with a copy of the contract including costs.*

On March 21, 2017 the Department of Medical Assistance Services awarded the Medicaid Enterprise System Pharmacy Benefit Management Solution to Magellan Medicaid Administration. Please find the completed contract including costs provided with this letter.

Should you have any questions or need additional information, please feel free to contact me at (804) 786-8099.

CBJ/

Enclosure

pc: The Honorable William A. Hazel, Jr., MD, Secretary of Health and Human Resources



**Pharmacy Benefit Management  
Solution Contract No. 10035**

between

**The Department of Medical Assistance Services**

and

**Magellan Medicaid Administration, Inc.**

**PHARMACY BENEFIT MANAGEMENT SOLUTION CONTRACT  
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## PHARMACY BENEFITS MANAGEMENT SOLUTION CONTRACT NO. 10035

THIS Pharmacy Benefit Management Solution CONTRACT ("Contract") is entered into by and between the Virginia Department of Medical Assistance Services (DMAS), pursuant to §2.2-2012 of the Code of Virginia, and Magellan Medicaid Administration, Inc. ("Supplier"), a corporation headquartered at 11013 West Broad Street, Suite 500, Glen Allen, VA 23060 to be effective as of March 13, 2017 ("Effective Date").

### 1. PURPOSE AND SCOPE

This Contract sets forth the terms and conditions under which Supplier agrees to provide and implement for DMAS a Pharmacy Benefit Management Solution (PBMS) as described in Exhibit A, Requirements, Exhibit G – Cloud Services - Additional Terms and Conditions shall apply and are incorporated into this Contract.

### 2. DEFINITIONS

#### A. Acceptance

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

#### B. Agent

Any third party independent agent of DMAS.

#### C. Business Day/Hour

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

#### D. Center for Medicare and Medicaid Services (CMS)

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

#### E. Component

Software or Deliverable delivered by Supplier under this Contract.

#### F. Computer Virus

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

#### G. Confidential Information

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

#### H. Deliverable

The tangible embodiment of the work performed or Services, Maintenance Services, Licensed Services, Solution, Component, Software, plans, reports, data, Product, Supplier Product and

Updates provided by the Supplier in fulfilling its obligations under the Contract, including the development or creation of Work Product, if Work Product is authorized under the Contract.

**I. Department of Medical Assistance Services**

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

**J. Desktop Productivity Software**

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

**K. Documentation**

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

**L. Electronic Self-Help**

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

**M. Health Record**

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

**N. Maintenance Coverage Period (MCP)**

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

**O. Maintenance Level**

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

**P. Maintenance Services (or "Maintenance" or "Software Maintenance" or "Solution Support Services")**

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

**Q. Party**

Supplier or DMAS.

**R. Protected Health Information**

Protected health information (PHI) means individually identifiable health information that is (i) transmitted in electronic media, (ii) maintained in electronic media, or (iii) transmitted or

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

**S. Receipt**

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

**T. Requirements**

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

**U. Services**

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

**V. Software**

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

**W. Software Publisher**

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

**X. Solution or Supplier Hosted Solution**

The Supplier's contractually committed technical approach for solving a technology business objective and associated Requirements as defined and authorized by the scope of the Contract. Solution means all Supplier and Supplier's third-party providers' Components making up the Solution, including but not limited to Software, Product, configuration design, implementation, Supplier-developed interfaces, Services and Work Product.

**Y. Supplier**

Means Magellan Medicaid Administration, Inc.

**Z. Update**

As applicable, any update, modification or new release of the Software, System Software, Application, Documentation or Supplier Product that Supplier makes generally available to its



customers at no additional cost. Software Updates include patches, fixes, upgrades, enhancements, improvements, or access mode, including without limitation additional capabilities to or otherwise improve the functionality, increase the speed, efficiency, or base operation of the Software.

**AA. Virginia Information Technologies Agency (VITA)**

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

**BB. Work Product**

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

**3. TERM AND TERMINATION**

**A. Contract Term**

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, shall continue to be effective and legally binding with the Contract Term defined by at least two Design, Development and Implementation Phase(s) from the Effective Date through September 30, 2017 for all core services, and on or before March 31, 2018 for remaining services, as well as Operations and Maintenance Phase that begins on October 1, 2017 and ends September 30, 2022. DMAS, in its sole discretion, may extend this Contract with up to three (3) one-year option periods that would run from October 1 through September 30 for each period. DMAS will issue a modification to this Contract stating the extension period, not less than thirty (30) days prior to the expiration of any current term. The Parties shall mutually agree to an implementation schedule no later than 30 days after the Effective Date.

**B. Termination for Convenience**

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

**C. Termination for Breach or Default**

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

If DMAS deems the Supplier to be in breach and/or default, DMAS shall provide Supplier with notice of breach and/or default and allow Supplier to cure the breach and/or default in a time period determined by DMAS which shall be appropriate to the complexity of the matter and generally shall not be less than thirty (30) days. If Supplier fails to cure the breach as noted, DMAS may immediately terminate this Contract, in whole or in part. Any such termination shall be deemed a Termination for Breach or Termination for Default. In addition, if Supplier is found by a court of competent jurisdiction to be in violation of or to have violated 31 USC 1352 or if Supplier becomes a party excluded from Federal Procurement and Non-procurement Programs, DMAS may immediately terminate this Contract, in whole or in part, for breach, and DMAS shall provide written notice to Supplier of such termination. Supplier shall provide prompt written notice to DMAS if Supplier is charged with violation of 31 USC 1352 or if federal debarment proceedings are instituted against Supplier.

**D. Termination for Non-Appropriation of Funds**

All payment obligations from public bodies under this Contract are subject to the availability of legislative appropriations at the federal, state, or local level, for this purpose. In the event of non-appropriation of funds, irrespective of the source of funds, for the items under this Contract, DMAS may terminate this Contract, in whole or in part, for those goods or services for which

funds have not been appropriated. Written notice will be provided to the Supplier as soon as possible after legislative action is completed.

**E. Termination Because of Financial Instability**

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

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

**F. Effect of Termination**

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

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

**G. Termination by Supplier**

Termination by Supplier will not be considered.

**H. Transition of Services**

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

**I. Contract Kick-Off Meeting**

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

**J. Contract Closeout**

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

**4. SUPPLIER PERSONNEL**

**A. Selection and Management of Supplier Personnel**

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

**B. Supplier Personnel Supervision**

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

**C. Key Personnel**

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

**D. Subcontractors**

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

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

## 5. NEW TECHNOLOGY

### A. Access to New Technology

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

### B. New Service Offerings Not Available from Supplier

The Parties agree that Supplier shall have the first right to offer new products or services that are reasonably under the scope of the Contract and to work in good faith to reach agreement on the cost and scope of such products or services. If new product or service offerings become available to DMAS under the scope of the Contract, and cannot be competitively provided by the Supplier, DMAS may purchase such new products or services from a third party, and Supplier will reasonably cooperate with DMAS to incorporate such products or services into DMAS' program, if DMAS elects to use such new product or service offerings.

## 6. SOFTWARE LICENSE

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

### A. License Grant

#### For Software licensed by Supplier

- i. Supplier grants to DMAS a fully paid, perpetual, worldwide, nonexclusive, transferable, irrevocable object code license to use, copy, modify, transmit and distribute the Software and Documentation including any subsequent revisions, in accordance with the terms and conditions set forth herein and subject only to the limitations and/or restrictions explicitly set forth in this Contract. It is expressly understood that "perpetual" license rights shall commence upon delivery of the Software to DMAS and shall exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the Contract. The Software is the property of Supplier, and no title or ownership of the Software or any of its parts, including Documentation, shall transfer to DMAS.
- ii. DMAS and its Agents shall have the right to use, copy, modify, transmit and distribute the Software for their benefit, for government use and purposes, including internal and third-party information processing.
- iii. DMAS may allow access to the Software by third party vendors who are under contract with DMAS to provide services or by other entities as required for conducting the business of government. Access includes loading or executing the Software on behalf of DMAS or their Agents.
- iv. The license fee includes a test system copy, which consists of the right to use the Software for non-production test purposes, including but not limited to, problem/defect identification, remediation, and resolution, debugging, new version evaluation, Software interface testing, and disaster recovery technique analysis and implementation.
- v. In the event that all DMAS' copies of the Software, including all backup copies, are destroyed, irreparably damaged or otherwise lost due to fire, explosion, sabotage, flood or other disaster, Supplier shall provide to DMAS, at no additional cost, replacement copies of the Software and Documentation. Nothing contained in this Section shall obligate Supplier to replace or assist in the recovery of data lost concurrent with the loss of the Software.
- vi. DMAS may make a reasonable number of copies of the Software and Documentation for use in training, support, demonstrations, backup, archiving, disaster recovery and development, and may run the Software concurrently at a back-up site, for no additional license fees or costs. DMAS agrees that any copies of the Software or Documentation that it makes under this Contract shall bear all copyright, trademark and other proprietary

notices included therein by Supplier. DMAS may add its own copyright or other proprietary notice, or copyright or other proprietary notice of DMAS, to any copy of the Software or Documentation, which contains modifications to which DMAS has ownership rights pursuant to this Contract.

- vii. Except as expressly authorized, DMAS shall not distribute the Software to any third party without Supplier's prior written consent.
- viii. Except as provided or allowed by law, no Party shall reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from any software or other intellectual property of any other Party.

For Software licensed by Software Publisher – To the extent Supplier's services rely upon a software from a Software Publisher (for example, Informatica, Oracle Database Application Server and other tools) Supplier shall assist DMAS' purchase of the software.

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

**B. License Type**

All licenses granted, regardless of the type, include all uses set forth above. License type may vary by Software product and shall be set forth in Exhibit B and identified on any order issued pursuant to this Contract.

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

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

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

**7. RIGHTS TO WORK PRODUCT**

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

**A. Work Product**

DMAS and Supplier each acknowledge that performance of this Contract may result in Work Product. The Parties shall document all Work Product specifications and such specifications shall be made an incorporated exhibit to this Contract. Supplier agrees that it shall promptly and fully disclose to the Commonwealth or the DMAS any and all Work Product generated, conceived, reduced to practice or learned by Supplier or any of its employees, either solely or jointly with others, during the term or performance of this Contract, which in any way relates to the business of the Commonwealth or DMAS. Supplier further agrees that neither Supplier nor Supplier's employees, contractors, agents or subcontractors, nor any party claiming through Supplier or Supplier's employees, shall, other than in the performance of this Contract, make use of or disclose to others any proprietary information relating to the Work Product. All Services performed hereunder shall include delivery of all source and object code and all executables and documentation for all Work Product. Supplier shall at no time deny access to the Work Product, regardless of form, by the Commonwealth or the DMAS.

**B. Ownership**

Supplier agrees that, whether or not the Services are considered "works made for hire" or an employment to invent, all Work Product discovered, created or developed under this Contract

shall be and remain the sole property of the Commonwealth and its assignees. Except as specifically set forth in writing and signed by both DMAS and Supplier, Supplier agrees that the Commonwealth shall have all rights with respect to any Work Product discovered, created or developed under this Contract without regard to the origin of the Work Product. In all instances, the Commonwealth of Virginia owns any software designed, developed, installed, or enhanced with 90 % Federal Financial Participation (FFP). CMS has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use and authorize others to use for federal government purposes, software, modifications to software, and documentation that is designed developed, installed or enhanced with 90% FFP.

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

**C. Pre-existing Work**

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

**D. Return of Materials**

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

**8. GENERAL WARRANTY**

Supplier warrants and represents to DMAS that Supplier will fulfill its contractual obligations and meet all needed requirements during the entirety of the Contract Term as defined in Paragraph 3(A) and as described in Exhibit A as follows:

**A. Ownership**

Supplier has the right to perform and provide all contractual obligations and provide all needed services and products without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party. Supplier warrants that the Solution as authorized and provided by Supplier under this Contract, shall meet or exceed the Requirements. Supplier shall correct, at no additional cost to DMAS, all errors identified during the Contract term that result in supplier's failure to meet the Requirement or its contractual obligations.

**B. Intentionally Left Blank**

**C. Intentionally Left Blank**

**D. Interoperability Warranty**

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

**E. Performance Warranty**

Supplier warrants and represents the following with respect to Performance:

i. All contractual obligations shall be performed with care, skill and diligence, consistent with or above applicable professional standards currently recognized in Supplier's profession, and Supplier shall be responsible for the professional quality, technical accuracy, completeness and coordination of all plans, information, specifications, Deliverables and Services furnished under this Contract;

ii. All contractual obligations pursuant to the Request for Proposal ("RFP"), and any associated Deliverables shall be fit for the particular purposes specified by DMAS in the RFP and in this Contract, and Supplier is possessed of superior knowledge with respect to its contractual obligations and is aware that DMAS is relying on Supplier's skill and judgment in providing its contractual obligations;

**F. Documentation and Deliverables**

Supplier warrants the following as applicable to the Contract:

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

ii. If the RFP specified or if Exhibit A or Supplier's proposal specifies the hardware equipment DMAS shall use to run the Solution, then Supplier warrants the Solution, and any subsequent Solution Component Software release, is compatible with and shall perform well with such hardware equipment; iii. The Solution provided hereunder includes Component Software at the current release level unless DMAS specifies an older version in the contract documents;

iv. No corrections, work arounds or future Software or Solution Component Software releases provided by Supplier under the warranty provisions or under maintenance shall degrade the Solution, cause any other warranty to be breached, or require DMAS to acquire additional hardware equipment or software;

v. Supplier warrants that the Documentation and all modifications or amendments thereto which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow a user/programmer to understand fully the Solution or Solution Component or to load/use/operate the Software without reference to any other materials or information.

**G. Malicious Code**

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

Notwithstanding any rights granted under this Contract or at law, Supplier hereby waives under any and all circumstances any right it may have or may hereafter have to exercise Electronic Self-

Help. Supplier agrees that DMAS may pursue all remedies provided under law in the event of a breach or threatened breach of this Section, including injunctive or other equitable relief.

**H. Open Source**

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

**I. Supplier's Viability**

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

**J. Supplier's Past Experience**

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

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

**9. DELIVERY AND INSTALLATION**

**A. Scheduling**

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

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

**B. Deployment of Solution**

**1. Supplier Deployment of Solution**

The Solution fee includes initial deployment of the complete Solution. Supplier is required to deploy the Solution in accordance with the deployment schedule set forth in the Contract. Deployment shall include the installation of any Software Component and, if agreed, any hardware Component, of the Solution. Supplier shall conduct its standard appropriate diagnostic evaluation at the agreed upon site to determine that the Solution is properly deployed and fully ready for productive use, and shall supply DMAS with a copy of the results of the diagnostic evaluation promptly after completion of deployment.

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

**2. DMAS Installation of Software**



The Solution as proposed does not include Supplier supplied Software that requires installation. If in the future, the Solution includes Software which may be installed by DMAS and DMAS elects to install the Software itself, the Software shall be deemed to be installed when all programs, program libraries and user interfaces are copied to and initialized on the appropriate equipment as executable by having DMAS invoke the primary function of each major Component of the Software or when Acceptance criteria as specified in the Contract have been met. DMAS shall provide to Supplier written notice of Acceptance upon completion of installation and successful Acceptance testing. Supplier shall proceed with full deployment of the Solution concurrently with or after DMAS' installation of the Software, as agreed between DMAS and Supplier in the Contract

**C. Documentation of Software Configuration**

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

**D. Managed Environment**

DMAS is establishing and building a multi-provider, integrated services platform (the "**Integrated Services Platform**") for the delivery of certain IT services to DMAS and the other Business Partners within the IT environments supported by DMAS (collectively, the "**Managed Environment**"), as is further described in **Integration Services** (within Section 3.a.7.3) and by further notice from DMAS to Integrated Supplier from time to time. The Integrated Services Platform is and shall comprise various services provided by various third party suppliers, including the Services and Supplier (each such supplier, an "**Integrated Supplier**"), with which DMAS shall contract from time to time to provide services to DMAS and other Business Partners and DMAS Customers. The Managed Environment requires coordination, cooperation and integration among the Integrated Suppliers, notwithstanding that they may otherwise view themselves as competitors, in order to work together toward the common goal of uninterrupted, high quality services to DMAS, Business Partners, and the other DMAS Customers. In this regard, Integrated Supplier must perform the Services and its other obligations under this Contract and in connection therewith, interact and cooperate with others within the Managed Environment in a manner that, as a foremost guiding principle, first considers the best interests of DMAS and the other Business Partners. In connection with Supplier's role as an Integrated Supplier within the Managed Environment, Integrator Supplier acknowledges and agrees to the following.

In performing the Services, Integrated Supplier shall fully cooperate with and work in good faith with DMAS and the other Business Partners and other Integrated Suppliers, including any Integrated Supplier with which DMAS may contract, from time to time, to provide multisourcing services integration for the Managed Environment (any such Integrated Supplier designated so by DMAS, the "Multisourcing Services Integrator" or "MSI") to support and promote the operation and objectives of the Integrated Services Platform. Such cooperation may include, in addition to other provisions reflected in this Contract or requested by DMAS: (i) timely providing physical access and electronic access to business processes and associated equipment, materials and/or systems to the extent necessary and appropriate for Business Partners, DMAS Customers or other Integrated Suppliers to perform the work required of or assigned to them; (ii) timely providing written requirements, standards, policies or other documentation for the business processes and associated equipment, materials or systems procured, operated, supported or used by Integrated Supplier in connection with the Services; (iii) timely providing access to DMAS Content to Business Partners and/or other Integrated Suppliers; (iv) timely providing cooperation and assistance in connection with Transition Out Assistance to facilitate the orderly transfer of terminated Services from Integrated Supplier to Business Partners and/or other Integrated Suppliers and ensuring that there is no degradation in the performance of Services caused by the adjustments made by Integrated Supplier during and following such transfer of Services; (v) establishing procedures and other arrangements with other Integrated Suppliers to ensure continuity of seamless service (including the Services) to the Business Partners and (vi) any other

cooperation or assistance reasonably necessary for the Business Partners and/or other Integrated Suppliers to perform their operations and activities. As part of the cooperation and participation of Integrated Suppliers in the Managed Environment, the Integrated Services Platform may include the development and utilization of a Service Management Manual and Operating Level Agreements as follows:

- i. **Service Management Manual.** As part of the Integrated Services Platform, DMAS anticipates MSI developing a Service Management Manual standard template (the “**Service Management Manual**”) which shall serve as a common document shared (as applicable) among the Integrated Suppliers (including Supplier for this agreement) providing descriptions of the Managed Environment and the performance by each Integrated Supplier of its respective obligations to DMAS in coordination and cooperation with the Business Partners and other Integrated Suppliers. The Services Management Manual is further described in **Section 9.D.2 (Service Management Manual)**. Until the adoption of the Service Management Manual, the Parties shall utilize the Policy and Procedures Manual in accordance with **Section 9.D.1 (Policy and Procedures Manual)**.
- ii. **Operating Level Agreements.** If, when and as requested by DMAS, enter into mutually agreed joint governance and issue resolution document(s), including operating level agreements, between and among MSI, Integrated Supplier and other Integrated Suppliers. Operating Level Agreements are further described in **Section 9.D.3 (Operating Level Agreements)**.

In no event will any provision of this Agreement, or any right or benefit of DMAS or the Business Partners and DMAS Customers provided for under this Agreement, be reduced, limited or otherwise adversely affected (including through any increase in cost, charge or expense) as a consequence of the terms of the Service Management Manual or any Operating Level Agreement.

**D.1 Policy and Procedures Manual.** Without limiting the foregoing, until the Service Management Manual has been implemented by agreement of the Parties in accordance with **(e) (Transition to Service Management Manual)**, the following shall apply.

- a) **Policy and Procedures Manual Delivery and Content.** Supplier shall deliver to DMAS for its review, comment and written approval (i) a reasonably complete draft of the Policy and Procedures Manual within 6 weeks after the Effective Date, and (ii) a final draft of the Policy and Procedures Manual within 12 weeks after the Effective Date. DMAS shall have at least fifteen (15) Business Days to review each draft Policy and Procedures Manual and provide Supplier with comments and revisions. Supplier shall then incorporate any comments or changes of DMAS into the Policy and Procedures Manual and shall deliver a final revised version to DMAS within fifteen (15) Business Days of its receipt of such comments and changes for DMAS’s final written approval.

At a minimum, the Policy and Procedures Manual shall include:

- i. the procedures for Business Partner and Customer/Supplier interaction and communication, including: (A) call lists; (B) procedures for (and limits on) direct communication by Integrated Supplier with Business Partner and Customer personnel; (C) problem management and escalation procedures; (D) priority and project procedures; (E) Acceptance testing and procedures; (F) quality assurance processes and procedures and internal controls; (G) the Project formation and approval process; (H) a schedule, format and required attendees for meetings regarding performance reporting, account relationship management, issues management, risk management, request management and financial management; (I) Change Control Procedures; and (J) Disaster Recovery/Business Continuity plans;

- ii. the root cause analysis process; and
- iii. practices, policies and procedures addressing any other issues and matters as DMAS shall require.

Supplier shall incorporate DMAS's then current policies and procedures in the Policy and Procedures Manual.

- b) Compliance. Integrated Supplier shall perform the Services in accordance with applicable Laws, DMAS's then current policies and procedures until the Policy and Procedures Manual is finalized and agreed upon by the Parties. Thereafter, Supplier shall perform the Services in accordance with the Policy and Procedures Manual, all applicable Laws and all other terms and conditions of this Contract. In the event of a conflict between this Contract and the Policy and Procedures Manual, the Contract shall take precedence.
- c) Maintenance, Modification and Updating. Integrated Supplier shall promptly modify and update the Policy and Procedures Manual to reflect changes in the operations or procedures described therein, to reflect changes in the work to be performed, and to comply with DMAS Rules. The Integrated Supplier shall provide the proposed changes in the manual to DMAS for review, comment and written approval. Integrated Supplier shall maintain the Policy and Procedures Manual so as to be accessible electronically to DMAS and Business Partner and DMAS Customer management and Users via a secure web site in a manner consistent with DMAS's security policies.
- d) Regular Review. The Parties shall meet to perform reviews of the Policy and Procedures Manual as reasonably requested by DMAS.
- e) Transition to Service Management Manual. As requested by DMAS, Integrated Supplier shall work with DMAS to supersede the Policy and Procedures Manual with the Service Management Manual in connection with DMAS's further development and operation of the Managed Environment. If and to the extent the Policy and Procedures Manual is superseded by the Service Management Manual, Supplier shall comply with the Service Management Manual and cooperate with DMAS and its designee(s) in its maintenance and development. Until such time as the Service Management Manual shall have superseded the Policy and Procedures Manual in accordance with the foregoing and unless otherwise provided, or the context shall otherwise require, references in this Agreement to the Service Management Manual shall be deemed references to the Policy and Procedures Manual.
- f) Work Product. As between the Parties, the Policy and Procedures Manual will be deemed to be a Work Product owned by DMAS.

#### **D.2 Service Management Manual**

- a) Upon its adoption by DMAS, the Service Management Manual will serve as a common document shared among the Integrated Suppliers, which all will operate in accordance with and be subject to the terms therein, as applicable to each such party. Among other things, the Service Management Manual will provide detailed descriptions of the Managed Environment and the manner in which functions will be performed by the Integrated Supplier and each of the other Integrated Suppliers, including:
  - i. Equipment, Materials and Systems to be procured, used or supported;
  - ii. Documentation (including manuals, user guides and specifications) to be created and/or maintained by the Integrated Supplier and the other Integrated Suppliers, including, as applicable, the MSI;
  - iii. specific activities to be undertaken by the Integrated Supplier in connection with each Service, including, where appropriate, the direction, supervision,

monitoring, staffing, reporting, planning and oversight activities to be performed by the Integrated Supplier under this Agreement;

- iv. Operational Change Control Procedures and Contract Change Control Procedures;
  - v. procedures for DMAS, Business Partners and the Integrated Suppliers to interact, communicate, escalate and resolve issues, exchange information and provide access to each other;
  - vi. checkpoint reviews, testing, acceptance, controls and other procedures to be implemented and used to assure service quality;
  - vii. processes, methodologies and controls to be implemented and used by the Integrated Suppliers to comply and confirm compliance with (1) DMAS Rules; and (2) other obligations in the applicable agreements, including compliance with Laws; and
  - viii. other provisions related to the Managed Environment, as requested by DMAS. The Service Management Manual will be initially created and continuously updated and enhanced throughout the Term, with the MSI taking overall responsibility for preparing, updating, maintaining and ensuring the accuracy of the Service Management Manual template, with the cooperation and support of the other Integrated Suppliers. The Integrated Supplier will work with the MSI and the other Integrated Suppliers in creating and maintaining the contents of the Service Management Manual, pursuant to a process further described in this Contract. The Service Management Manual, and any updates thereto, will be subject to DMAS's approval.
- b) The Integrated Supplier will perform the Services in accordance with the most recent DMAS-approved version of the Service Management Manual.
  - c) As between the Parties, the Service Management Manual will be deemed to be a Work Product owned by DMAS.

### **D.3 Operating Level Agreements**

- a) Among other things, Operating Level Agreements will:
  - i. govern how the parties thereto coordinate activities, interact and integrate processes, ensure that there are no gaps or unnecessary duplication of responsibility, and will define at an operating level the demarcation of Functions and the touch points between such parties; and
  - ii. otherwise describe key dependencies between such parties.
- b) The Integrated Supplier will execute an Operating Level Agreement with the MSI, as well as other Operating Level Agreements with any applicable Integrated Suppliers.
- c) The Integrated Supplier will ensure that all Operating Level Agreements to which it is a party current and consistent with all other relevant documentation (e.g., the Service Management Manual, DMAS Rules).
- d) Each Operating Level Agreement will be subject to DMAS's review, comments and approval. The Integrated Supplier will bear the responsibility to ensure that the MSI and any other applicable Integrated Suppliers incorporate DMAS's comments, resolve any DMAS concerns, and obtain DMAS's written approval prior to finalization of any such Operating Level Agreement to which the Supplier is a party. Similarly, in order for any amendment to an Operating Level Agreement to become effective, such amendment must be reviewed and approved in writing by DMAS.

## 10. ACCEPTANCE

### A. Software and Deliverable Acceptance Criteria

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

DMAS agrees to commence Acceptance testing in accordance with the work plan and the DMAS approved Test Plan. Acceptance testing will be no longer than such longer period as may be agreed in writing between DMAS and Supplier, for the first instance of each product type set forth in Exhibit B. Supplier agrees to provide to DMAS such assistance and advice as DMAS may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses. Any such travel expenses must be pre-approved by DMAS at the then-current per diem amounts as published by the Virginia Department of Accounts ([http://www.doa.virginia.gov/Admin\\_Services/CAPP/CAPP\\_Topics/20335 Meals Lodging 10200 8.pdf](http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_Meals_Lodging_10200_8.pdf)), or a successor URL(s)). DMAS shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing. Should DMAS fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) days following the Acceptance testing period, the Service shall be deemed Accepted.

### B. Software and Deliverable Cure Period

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

### C. Solution Acceptance Criteria

Solution shall be deemed accepted when DMAS determines that such Solution successfully operates in accordance with the Contract Requirements. DMAS agrees to commence Acceptance testing in accordance with the work plan and the DMAS approved Test Plan or such longer period as may be agreed in writing between DMAS and Supplier, after deployment of the Solution. Supplier agrees to provide DMAS such assistance and advice as such DMAS may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses. Any such travel expenses must be pre-approved by DMAS and shall be reimbursable by DMAS at the then-current per diem amounts as published by the Virginia Department of Accounts

[http://www.doa.virginia.gov/Admin\\_Services/CAPP/CAPP\\_Topics/20335 Meals Lodging 10200](http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_Meals_Lodging_10200)

[8.pdf](#), or a successor URL(s)). DMAS shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing. Should DMAS fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) days following the Acceptance testing period, the Service shall be deemed Accepted.

**D. Solution Cure Period**

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

**11. WARRANTY AND MAINTENANCE SERVICES**

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 entirety of the contract term as defined in Paragraph 3(A). Such services shall be performed without additional charge to DMAS.

**A. Known Defects**

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

**B. New Releases**

Provide to DMAS no later than the first day of general release, copies of the Software and Documentation revised to reflect any enhancements, including all new releases, upgrades, and access modes, to the Software made by Supplier, including, without limitation, modifications to the Software which can increase the speed, efficiency or base of operation of the Software or add additional capabilities to or otherwise improve the functionality of the Software. The Supplier is not obligated to provide new releases, new upgrades, and new access modes after the term of the Contract.

**C. Coverage**

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

**D. Service Levels**

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

- i) Priority 1 (system down) within six (6) hours;
- ii) Priority 2 (certain processing interrupted or malfunctioning but system able to process) within twenty four (24) hours;

iii) Priority 3 (minor intermittent malfunctioning, system able to process data) within three (3) days.

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

**E. Software Evolution**

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

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

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

**F. Escalation Procedures**

DMAS will be notified within one (1) hour of event. CIM will create a System Incident Report (SIR) and distribute to Supplier's account management staff within forty-eight (48) hours of the resolution. Supplier's internal steps will be included in DDI implementation documents.

**G. Remedies**

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

**H. Solution Support Services (Maintenance)**

Supplier shall provide Solution Support Services (Maintenance) during the entirety of the Contract Terms.

**12. FEES, ORDERING AND PAYMENT PROCEDURE**

**A. Fees and Charges**

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

**B. Reproduction Rights**

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

**C. Reimbursement of Expenses**

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

**D. Change Orders**

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

**E. Ordering**

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

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

**F. Invoice Procedures**

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



- i). Solution, product/Solution component, or Service type, or project milestone, and description
- ii). Quantity, charge and extended pricing for each Solution and/or Service item or milestone
- iii). Applicable order date
- iv). This Contract number and any applicable order number
- v). Supplier's Federal Employer Identification Number (FEIN).

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

**G. Purchase Payment Terms**

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

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

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

**13. STATUS MEETINGS**

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

**14. STEERING COMMITTEE**

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

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

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

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

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

## **15. POLICIES AND PROCEDURES GUIDE**

See Section 9 D.1

## **16. TRAINING AND DOCUMENTATION**

### **A. Training**

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

### **B. Documentation**

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

## **17. DMASSELF-SUFFICIENCY**

Prior to or at any time during Supplier's performance of the Contract, DMAS may require that Supplier provide to DMAS a detailed plan to develop DMAS self-sufficiency and to transition operation and management to DMAS, or its Agent, which Agent may be VITA, or an agent of VITA, or a third party provider under contract with DMAS. At DMAS' request for Supplier's Services issued hereunder, Supplier shall provide all assistance reasonably required by DMAS to develop DMAS' self-sufficiency in operating and managing the Solution, Software, Products and/or Services that Supplier provided to DMAS under the applicable Contract. During and/or after the transition period, DMAS may, at its sole discretion, elect to continue Solution Support Services (Maintenance) from Supplier based on a licensing fee and services negotiated in good faith at the time of the Self Sufficiency options are invoked., Solution Support Services include the delivery of new Software releases, updates and upgrades for the solutions covered as well as assistance in identifying and resolving Software related issues during operations. If the software is not running in a Supplier environment, any issues related to the infrastructure are not included. The software versions must be identical to those running in a current, Supplier hosted environment to which the updated versions of proprietary software is being deployed and involves the use of identical software development tools and technology.

## **18. COMPETITIVE PRICING**

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

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

## **19. ESCROW AGREEMENT**

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

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

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

- i. File List Test - To ensure the deposited items are catalogued and confirm they are readable and virus free, and if encrypted, that the Escrow Agent has the decryption keys on deposit.
- ii. Inventory and Analysis Test – To provide a complete audit and inventory of the deposit including analysis of deposited media to verify the presence of build instructions, to identify all of materials necessary to recreate the original development environment and to confirm the presence of all build instructions, file classification tables, database schema and listings.
- iii. Compile Test – To validate whether the development environment can be recreated from the deposited documentation and files; to identify third-party libraries, to recreate the Supplier's

development environment; to compile source files and modules, to recreate executable code and to prepare a complete list of any hardware or software configurations.

iv. Binary Comparison Test – To test the functionality of the compiled deposit materials by comparing the files built in compile testing to the licensed, executable file running at DMAS' or Authorized User's site.

v. Full Usability Test – To confirm the source code placed in escrow will be fully functional in the event of a release and to perform a relevant series of tests to ensure that replicated software runs properly in the required DMAS or Authorized User environment.

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

vii. Fault Remedy – To collaborate with Supplier on fixing any faults discovered during the testing, to obtain corrected escrow items and to re-perform any verification tests as necessary until all tests are successful, with written detailed reports to DMAS or the Authorized User.

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

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

## **20. CONFIDENTIALITY**

### **A. Treatment and Protection**

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

### **B. Exclusions**

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

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

### **C. Return or Destruction**

Upon the termination or expiration of this Contract or upon the earlier request of DMAS, Supplier shall (i) at its own expense, (a) promptly return to DMAS all tangible Confidential Information (and

all copies thereof except the record required by law) of DMAS as required by law, or (b) upon written request from DMAS, destroy such Confidential Information and provide DMAS with written certification of such destruction as required by law, and (ii) cease all further use of DMAS' Confidential Information, whether in tangible or intangible form.

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

**D. Confidentiality Statement**

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

**E. Business Associate Agreement (BAA)**

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

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

**21. INDEMNIFICATION AND LIABILITY**

**A. Indemnification**

Supplier agrees to indemnify, defend and hold harmless the Commonwealth, DMAS, their officers, directors, agents and employees (collectively, "Commonwealth's Indemnified Parties") from and against any and all losses, damages, claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, assessments, fines, penalties (whether criminal or civil), judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Commonwealth's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) any act or omission of any employee, agent, or subcontractor of Supplier, (iii) breach of any representation, warranty or covenant of Supplier contained herein, (iv) any defect in the Supplier-provided products or services, or (v) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Supplier-provided products or services. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases involving the Commonwealth or state agencies, the selection and approval of counsel and approval of any settlement shall be satisfactory to the Commonwealth. In the event that a Claim is commenced against any of Commonwealth's Indemnified Parties alleging that use of the Supplier-provided products or

services, including any components thereof, or that the Supplier's performance or delivery of any product or service under this Contract infringes any third party's intellectual property rights and Supplier is of the opinion that the allegations in such Claim in whole or in part are not covered by this indemnification provision, Supplier shall immediately notify DMAS in writing, via certified mail, specifying to what extent Supplier believes it is obligated to defend and indemnify under the terms and conditions of this Contract. Supplier shall in such event protect the interests of the Commonwealth's Indemnified Parties and secure a continuance to permit DMAS to appear and defend their interests in cooperation with Supplier as is appropriate, including any jurisdictional defenses DMAS may have.

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

**B. Liability**

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

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

**22. INSURANCE**

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

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

### **23. PERFORMANCE BOND**

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

### **24. SECURITY COMPLIANCE**

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

DMAS shall have the right to review Supplier's information security program prior to the commencement of Licensed Services and from time to time during the term of this Agreement. During the performance of the Licensed Services, on an ongoing basis from time to time, DMAS, at its own expense, shall be entitled to perform, or to have performed, an on-site audit of Supplier's information security program. The audit shall be conducted so as not to unduly interfere with the operation of Supplier's business operations. In the event DMAS wishes to conduct an audit, it shall provide a written audit request to Supplier and a document outlining the proposed scope of the audit at least thirty (30) days prior to the audit.

In lieu of an on-site audit, upon request by DMAS, Supplier agrees to complete, within forty-five (45 days) of receipt, an audit questionnaire provided by DMAS regarding Supplier's information security program. Supplier shall implement any reasonably required safeguards as identified by any program audit.

## **25. IMPORT/EXPORT**

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

## **26. BANKRUPTCY**

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

## **27. GENERAL PROVISIONS**

### **A. Relationship Between DMAS and Supplier**

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

### **B. Incorporated Contractual Provisions**

The then-current contractual provisions at the following URL are mandatory contractual provisions, required by law or by DMAS, and that are hereby incorporated by reference: [http://www.vita.virginia.gov/uploadedfiles/VITA\\_Main\\_Public/scm/StatutorilyMandatedTsandCs.pdf](http://www.vita.virginia.gov/uploadedfiles/VITA_Main_Public/scm/StatutorilyMandatedTsandCs.pdf)



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

For any work performed under this Contract that will or may include the entry, handling, processing, storage, movement, sharing of or access to Federal Tax Information (FTI) by Supplier or any subcontractor of Supplier in any manner, IRS Publication 1075 shall apply. The Tax Information Security Guidelines for Federal, State and Local Agencies – Exhibit 7, Safeguarding Contract Language, as appropriate, and the requirements specified in Exhibit 7 in accordance with IRC 6103(n) are included by reference and are located at this URL:

[http://www.vita.virginia.gov/uploadedFiles/VITA\\_Main\\_Public/SCM/Mandatory\\_IRS\\_Pub\\_1075\\_for\\_FTIData.pdf](http://www.vita.virginia.gov/uploadedFiles/VITA_Main_Public/SCM/Mandatory_IRS_Pub_1075_for_FTIData.pdf). Supplier hereby acknowledges that it will comply with all applicable requirements of these terms and IRS Publication 1075 in its entirety. Non-compliance with the terms and IRS Publication 1075 may be determined, solely by DMAS, as a material breach of the Contract. Further, the use of the term “Contractor” in these terms and IRS Publication 1075 means the same as the term “Supplier,” as defined and used in the Contract. FTI consists of federal tax returns and return information (and information derived from it) that is in the agency’s possession or control 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 (PII).

Pursuant to Virginia Executive Order 61 (2017), the Supplier, in its employment practices, subcontracting practices, and delivery of goods or services, shall not engage in discrimination based on race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status. The Supplier shall also include a provision in every subcontract and purchase order over \$10,000, prohibiting a subcontractor or vendor from engaging in discrimination based on race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status.

- C. The terms and conditions in documents posted to the aforementioned URLs are subject to change pursuant to action by the legislature of the Commonwealth of Virginia, change in DMAS policy, adoption of revised eVA business requirements, or change to IRS Publication 1075. 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. If a change is made to the mandatory terms and conditions, a new effective date will be noted in the document title. Supplier is advised to check the URLs periodically. Compliance with the Federal Lobbying Act**

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

**D. Governing Law**

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

**E. Dispute Resolution**

In accordance with §2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the public body from whom the relief is sought no later

than sixty (60) days after final payment; however, written notice of the Supplier's intention to file such claim must be given to such public body at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The relevant public body shall render a final decision in writing within thirty (30) days after its receipt of the Supplier's written claim.

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

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

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

**F. Advertising and Use of Proprietary Marks**

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

**G. Notices**

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

- i. To DMAS and to Supplier, if Supplier is incorporated in the Commonwealth of Virginia, to the addresses shown on the signature page.
- ii. To Supplier, if Supplier is incorporated outside the Commonwealth of Virginia, to the Registered Agent registered with the Virginia State Corporation Commission.

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

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

**H. No Waiver**

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

**I. Assignment**

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

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

**J. Captions**

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

**K. Severability**

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

**L. Survival**

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

**M. Force Majeure**

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

**N. Remedies**

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

**O. Right to Audit**

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

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

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

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

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

**P. Offers of Employment**

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

**Q. Contract Administration**

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

**R. Access to Premises**

The Supplier shall allow duly authorized agents or representatives of the state or federal government, during normal business hours, access to Supplier's and subcontractors' premises, to inspect, audit, monitor or otherwise evaluate the performance of the Suppliers and subcontractor's contractual activities and shall forthwith produce all records requested as part of such review or audit. In the event right of access is requested under this section, the Supplier and subcontractor shall, upon request, provide and make available staff to assist in the audit or inspection effort, and provide adequate space on the premises to reasonably accommodate the state or federal personnel conducting the audit or inspection effort. All inspections or audits shall be conducted in a manner as will not unduly interfere with the performance of Supplier or subcontractor's activities. The Supplier shall be given thirty (30) calendar days to respond to any preliminary findings of an audit before DMAS shall finalize its findings. All information so obtained will be accorded confidential treatment as provided under applicable law.

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

**S. Entire Contract**

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

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

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

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

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

DMAS  
By: Cynthia Jones  
(Signature)  
Name: Cynthia B. Jones  
(Print)  
Title: DIRECTOR  
Date: 3/21/2017  
Address for Notice:  
1000 E. BROAD ST.  
Suite 1300  
Richmond, VA 23219  
Attention: Supplier Contact

SUPPLIER  
By: Gregory S. Kaupp  
(Signature)  
Name: Gregory S. Kaupp  
(Print)  
Title: SVP/GM, Government Markets  
Date: March 15, 2017  
Address for Notice:  
Magellan Medicaid Administration, Inc.  
11013 W. Broad Street, Suite 500  
Glen Allen, VA 23060  
Attention: Contract Administrator

**EXHIBIT A**  
**REQUIREMENTS**

Exhibit A - Supplier's complete technical proposal to the Commonwealth of Virginia, Department of Medical Assistance Services in response to RFP 2016-06, Virginia Medicaid Enterprise System: Pharmacy Benefit Management Solution, as modified by the document entitled "Negotiations Summary: RFP 2016-06 - Pharmacy Benefit Management Solution (PBMS)" dated November 7, 2016.

**EXHIBIT B**

**SOLUTION OPTIONS LIST, FEES, SERVICE CHARGES AND PAYMENT SCHEDULE**

Exhibit B – Solution Options List, Fees, Service Charges and Payment Schedule of Supplier's proposal to the Commonwealth of Virginia, Department of Medical Assistance Services in response to RFP 2016-06, Virginia Medicaid Enterprise System: Pharmacy Benefit Management Solution, as modified by the document entitled "Negotiations Summary: RFP 2016-06 - Pharmacy Benefit Management Solution (PBMS)" dated November 7, 2016.

**EXHIBIT C**  
**ESCROW AGREEMENT**



**EXHIBIT C: ESCROW AGREEMENT**

**Exhibit E  
Beneficiary Enrollment Form and Amendment**

Depositor and Iron Mountain Intellectual Property Management, Inc. ("Iron Mountain"), hereby acknowledge that **Beneficiary Company Name: The Virginia Department of Medical Assistance Services** is the **Beneficiary** referred to in the Escrow Agreement that supports **Deposit Account Number: 50334** with Iron Mountain as the escrow agent. **Beneficiary** hereby agrees to be bound by all provisions of such Agreement as herein amended. The last date noted on the signature blocks of this enrollment shall be the Effective Date.

Iron Mountain, Depositor and Beneficiary hereby agree to amend such Agreement as follows:

1. Section 1 of Exhibit C 'Release Conditions' is deleted in its entirety and replaced with the following:  
"1. **Release Conditions.**  
Depositor and Beneficiary agree that a Work Request for the release of the Deposit Material shall be based solely on one or more of the following conditions (defined as "**Release Conditions**"):
  - a) Depositor's failure to carry out its support and maintenance obligations imposed by its contract with Beneficiary for a period of sixty (60) days;
  - b) Depositor's breach or default under the License Agreement;
  - c) Depositor's bankruptcy;
  - d) Depositor's failure to continue to do business in the ordinary course."
  
2. Subsection (o) of Section 17 of the Agreement is deleted in its entirety and replaced with the following:  
"(o) Disputes.  
In the event of a dispute relating to or arising among any of the parties concerning this Agreement, the parties will work in good faith towards resolution. If resolution is not reached, a party may pursue any right available to them under the courts of Virginia."
  
3. The Parties acknowledge that there are certain provisions that are mandated by the Commonwealth of Virginia or the Federal government to be included in every agreement entered into by the Commonwealth of Virginia. Iron Mountain shall comply with the terms set forth below, to the extent applicable. To the extent the Agreement conflicts with the following provisions, the following provisions shall supersede. In the following provisions Iron Mountain shall be referred to as the Contractor.

**A. Anti-Discrimination**

- a. During the performance of this Agreement, the Contractor agrees as follows:
  - i. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, sexual orientation, gender identity, age, political affiliation, disability, veteran status, or any other basis prohibited by state law relating to discrimination in employment, except when there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, including the names of all contracting agencies with which the contractor has contracts of over \$10,000.
  - ii. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

- iii. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for meeting these requirements.

**B. Immigration**

Contractor does not, and shall not during the performance of this Contract, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

**C. Contractor/Subcontractor Participation in E-Verify**

In compliance with *Code of Virginia* § 2.2-4308.2, (Effective December 1, 2013), registration and use of federal employment eligibility verification program is required for all Contractors and subcontractors ("employer") conducting business in the Commonwealth.

A. For purposes of this section, "E-Verify program" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, § 403(a), as amended, operated by the U.S. Department of Homeland Security, or a successor work authorization program designated by the U.S. Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99- 603).

B. Any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract.

C. Any such employer who fails to comply with the provisions of subsection B shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program.

If requested, a Contractor must show proof of their continued participation e-Verify.

**D. Antitrust**

By entering into the Agreement, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said Agreement.

**E. Modifications**

This Agreement may be modified in accordance with § 2.2-4309 of the *Code of Virginia*. Such modifications may only be made by the representatives authorized to do so. No modifications to this contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing.

Any contract issued on a firm fixed price basis may not be increased more than twenty five percent (25%) or \$50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee. In no event may the amount of the contract be increased without adequate consideration.

The provisions of this section shall not limit the amount a party to a public contract may claim or recover against a public body pursuant to § 2.2-4363 (contractual claims) or any other applicable statute or regulation. The unauthorized approval of a modification cannot be the basis of a contractual claim as set forth in § 2.2-4363.

**F. Drug-Free Workplace**

During the performance of this Contract, the Contractor agrees to (i) provide a drug- free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

**G. Authorized To Transact Business**

A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law.

A Contractor shall not allow its existence as a partnership or corporation to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the *Code of Virginia*, to be revoked or cancelled at any time during the term of the Agreement. The Commonwealth may void this Agreement, in whole or in part, if the Contractor fails to remain in compliance with the provisions of this provision.

**H. Insurance**

The Contractor and any subcontractors will maintain the following insurance coverages during the entire term of the Contract. All insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission. Contractor will provide Certificates of Insurance upon request to substantiate its compliance with these requirements.

- (i) Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
- (ii) Employer's Liability - \$100,000.
- (iii) Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.

**I. Civil Rights Clause**

Contractor will comply with the title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to that title, to the end that, in accordance with title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which Contractor receives Federal financial assistance and HEREBY GIVES ASSURANCE THAT he will immediately take any measures necessary to effectuate this agreement.

**J. Anti-Kickback Clause**

Contractor certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this Agreement.

**K. Clean Air Act**

Contractor hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders or requirements issued under the Clean Air Act.

**L. Debarment Act compliance**

- If Contractor is found by a court of competent jurisdiction to be in violation of or to have violated 31 USC 1352 or if Contractor becomes a party excluded from Federal Procurement and Nonprocurement Programs, VITA may immediately terminate this Agreement, in whole or in part, for breach, and VITA shall provide written notice to Contractor of such termination. Contractor shall provide prompt written notice to VITA if Contractor is charged with violation of 31 USC 1352 or if federal debarment proceedings are instituted against Contractor.
- Notwithstanding the foregoing, Contractor shall not accept any order from an Authorized User if such order is to be funded, in whole or in part, by federal funds and if, at the time the order is placed, Contractor 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.

4. Subsection (d) of Section 17 of the Agreement is deleted in its entirety and replaced with the following:

“(d) Applicable Laws and Courts

This Agreement shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.”

Authorized Person(s) Notices Table			
Please provide the name(s) and contact information of the Authorized Person(s) under this Agreement. Please complete all information as applicable. Incomplete information may result in a delay of processing.			
DEPOSITOR		BENEFICIARY	
Print Name	Magellan Health, Inc. C/O Eric Rosenfeld	Print Name	COMMONWEALTH OF VIRGINIA DEPARTMENT OF MEDICAL ASSISTANCE SERVICES C/O CYNTHIA JONES
Title	SVP, Information Technology	Title	DMAS Director
Email Address	EMROSENFELD@MAGELLANHEALTH.COM	Email	Chris.Banaszak@dmas.virginia.gov
Street Address	15950 N 76th St, Suite 200	Street	600 East Broad Street, Suite 1300
Province/City/State	Scottsdale, AZ	Province/City/State	Richmond, VA
Postal/Zip Code	85260	Postal/Zip	23219
Phone Number	480-624-9430	Phone	804-225-4101
Fax Number		Fax	804-371-4981

Billing Contact Information Table			
Please provide the name and contact information of the Billing Contact under this Agreement. All Invoices will be sent to this individual at the address set forth below.			
DEPOSITOR		BENEFICIARY	
<input checked="" type="checkbox"/> Check if same as Authorized Person		<input checked="" type="checkbox"/> Check if same as Authorized Person	
Company Name	Magellan Health, Inc.	Company Name	N/A
Print Name	Karen Aubuchon	Print Name	
Title	Manager, Accounts Payable	Title	
Email Address	kmaubuchon@magellanhealth.com	Email Address	
Street Address	14100 Magellan Plaza	Street Address	
Province/City/State	Maryland Heights, MO	Province/City/State	
Postal/Zip Code	63043	Postal/Zip Code	
Phone Number	314-387-5605	Phone Number	
Fax Number	314-387-5407	Fax Number	
Purchase Order #	80689-0-PO	Purchase Order #	

Beneficiary Enrollment Form Work Request				
Please check boxes to order services and to identify the Paying Party				
Service	Service Description	One-Time Fees	Annual Fees	Paying Party
<input checked="" type="checkbox"/> Add Additional Beneficiary	Iron Mountain will fulfill a Work Request to add a new Beneficiary to an escrow deposit account in accordance with the Agreement.		\$850	<input checked="" type="checkbox"/> Depositor <input type="checkbox"/> Beneficiary
<input checked="" type="checkbox"/> Add Additional Deposit Account	Iron Mountain will set up one additional deposit account to manage and administrate access to new Deposit Material that will be securely stored in controlled media vaults in accordance with the Agreement that governs the Initial Deposit Account.		\$1,150	<input checked="" type="checkbox"/> Depositor <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Deposit Tracking Notification	At least semi-annually, Iron Mountain will send an update reminder to Depositor. Thereafter, Beneficiary will be notified of last deposit.	N/A	\$450	<input type="checkbox"/> Depositor <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Level 1 - Inventory and Analysis Test	Iron Mountain will perform an Inventory Test on the initial deposit, which includes Analyzing deposit media readability, virus scanning, developing file classification tables, identifying the presence/absence of build instructions, and identifying materials required to recreate the Depositor's software development environment. Output includes a report which will include build instructions, file classification tables and listings. In addition, the report will list required software development materials, including, without limitation, required source code languages and compilers, third party software, libraries, operating systems, and hardware, as well as Iron Mountain's analysis of the deposit.	\$5,250 or based on SOW if custom work required	N/A	<input type="checkbox"/> Depositor <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Level 2 - Deposit Compile Test	Iron Mountain will fulfill a Work Request to perform a Deposit Compile Test, which includes the outputs of the File Listing Report and the Level 1 - Inventory Test as described above plus recreating the Depositor's software development environment, compiling source files and modules, linking libraries and recreating executable code, pass/fail determination, creation of comprehensive build instructions with a final report sent to the Paying Party regarding the Deposit Material. The Paying Party and Iron Mountain will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.	Based on SOW	N/A	<input type="checkbox"/> Depositor <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Level 3 - Binary Comparison	Iron Mountain will fulfill a Work Request to perform one Deposit Usability Test - Binary Comparison which includes a comparison of the files built from the Deposit Compile Test to the actual licensed technology on the Beneficiary's site to ensure a full match in file size, with a final report sent to the Requesting Party regarding the Deposit Material. The Paying Party and Iron Mountain will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.	Based on SOW	N/A	<input type="checkbox"/> Depositor <input type="checkbox"/> Beneficiary
<input checked="" type="checkbox"/> Add Level 4 - Full Usability	Iron Mountain will fulfill a Work Request to perform one Deposit Usability Test - Full Usability which includes a confirmation that the built applications work properly when installed, based on pre-determined test scripts provided by the Parties. A final report will be sent to the Paying Party regarding the Deposit Material. The Paying Party and Iron Mountain will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.	Based on SOW	N/A	<input type="checkbox"/> Depositor <input type="checkbox"/> Beneficiary
<input checked="" type="checkbox"/> Custom Contract Fee	Custom contracts are subject to the Custom Contract Fee, which covers the review and processing of custom or modified contracts.	\$750	N/A	<input checked="" type="checkbox"/> Depositor <input type="checkbox"/> Beneficiary

IN WITNESS WHEREOF, the Parties have duly executed this Enrollment as of the Effective Date by their authorized representatives:

DEPOSITOR		BENEFICIARY	
Signature	<i>A. Young</i>	Signature	<i>Cynthia B. Jones</i>
Print Name	Alina Young	Print Name	Cynthia B. Jones
Title	Contracts Manager	Title	DIRECTOR
Date	March 17, 2017	Date	3/21/2017
Email Address	adyoung@magellanhealth.com	Email Address	CINDI.JONES@dmas.virginia.gov

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.	
Signature	<i>John Trout</i>
Print Name	John Trout
Title	Manager Contracts
Date	3/17/17
Email Address	ipmclientservices@ironmountain.com

Approved as to Form and Legal Content:  
Iron Mountain Legal Department

Jared Kinsler, Legal Department  
Date: February 23, 2017

Approved as to IPM Operational Content:  
Iron Mountain IPM Service Delivery

*Ryan B. Smith*  
Name: Ryan B. Smith, Contracts Specialist  
Date: February 23, 2017

All notices to Iron Mountain Intellectual Property Management, Inc. should be sent to [ipmclientservices@ironmountain.com](mailto:ipmclientservices@ironmountain.com) OR Iron Mountain Intellectual Property Management, Inc., Attn: Client Services, 2100 Norcross Parkway, Suite 150, Norcross, Georgia, 30071, USA. Telephone: 800-875-5669. Facsimile: 770-239-9201

**Exhibit D**  
**Auxiliary Deposit Account to Escrow Agreement**

<b>Master Deposit Account Number</b>	39319
<b>Auxiliary Deposit Account Number</b>	

Magellan Health, Inc. ("Depositor") and Iron Mountain Intellectual Property Management, Inc. ("Iron Mountain") have entered into the above referenced Escrow Agreement ("Agreement"). Pursuant to that Agreement Depositor may create additional deposit accounts ("Auxiliary Deposit Account") for the purpose of holding additional Deposit Material in a separate account which Iron Mountain will maintain separately from other deposit accounts under this Agreement. The new account will be referenced by the following name:  
 \_\_\_\_\_ ("Deposit Account Name").

Pursuant to the Agreement, Depositor may submit material to be held in this Auxiliary Deposit Account by submitting a properly filled out Exhibit B with the Deposit Material to Iron Mountain. For avoidance of doubt, Beneficiary's rights and obligations relative to the Deposit Material held in any deposit account under this Agreement are governed by the express terms of the Agreement; this form does not provide any additional rights in the Deposit Material.

**Depositor Authorized Person/Notices Table (Required Information)**

Please provide the name and contact information of the Depositor Authorized Person for this Deposit Account. It is the intent of the Parties that the individual identified below will act as the Authorized Person with respect to this Deposit Account. All Notices will be sent in accordance with the Notices Section of the Agreement. Please complete all information as applicable. Incomplete information may result in a delay of processing.

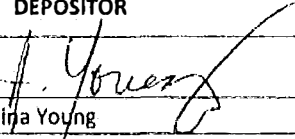

<b>Print Name</b>	Eric Rosenfeld
<b>Title</b>	SVP, Information Technology
<b>Email Address</b>	emrosenfeld@magellanhealth.com
<b>Street Address</b>	15950 N 76 <sup>th</sup> St., Suite 200
<b>City</b>	Scottsdale, AZ
<b>State/Province</b>	AZ
<b>Postal/Zip Code</b>	85260
<b>Country</b>	USA
<b>Phone Number</b>	480-624-9430
<b>Fax Number</b>	

**Billing Contact Information Table (Required Information)**

All Invoices for Deposit Account Fees will be sent to the contact set forth below. Incomplete information may result in a delay of processing.

<input type="checkbox"/>	<i>Check if same as Authorized Person or provide below</i>
<b>Company Name</b>	Magellan Health, Inc.
<b>Print Name</b>	Karen Aubuchon
<b>Title</b>	Manager, Accounts Payable
<b>Email Address</b>	kmaubuchon@magellanhealth.com
<b>Street Address</b>	14100 Magellan Plaza
<b>City</b>	Maryland Heights
<b>State/Province</b>	MO
<b>Postal/Zip Code</b>	63043
<b>Country</b>	USA
<b>Phone Number</b>	314-387-5605

The undersigned hereby agrees that all terms and conditions of the Agreement will govern this Auxiliary Deposit Account. The termination or expiration of any other deposit account will not affect this account.

DEPOSITOR		IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.	
Signature		Signature	
Print Name	Alija Young	Print Name	Iron Mountain
Title	Contracts Manager	Title	Manager, Contracts
Date	March 17, 2017	Date	3/17/17
Email Address	adyoung@magellanhealth.com	Email Address	ipmclientservices@ironmountain.com





<b>Deposit Account Number</b>	50334
<b>Service Type</b>	Level 4 – Usability Test
Iron Mountain internal use only.	

### Statement of Work (Deposit Material Verification)

This Statement of Work (the “Statement of Work” or “SOW”), is entered into by and between The Virginia Department of Medical Assistance Services (“Beneficiary”), Iron Mountain Intellectual Property Management, Inc. (“Iron Mountain”) and Magellan Health, Inc. (“Depositor”) (collectively referred to as the “Parties”) to more specifically describe verification or other technology related services to be performed pursuant to an escrow agreement governing the Deposit Account identified above (the “Agreement”). The Parties agree as follows:

**1. Subject Material**

Deposit material held in the Deposit Account identified above and further identified by Exhibit B number (“Deposit Material”) together with any additional software, Deposit Materials, instructions or specifications provided hereunder (“Test Material”) will be the subject of the verification or other technology related services to be performed in accordance with the Testing and Reporting Specifications set forth below (“Test Services”).

**2. Depositor Responsibilities**

Depositor shall: (1) provide all associated software, service packs, associated tools, and other materials required to recreate the build environments; (2) provide appropriate passwords, credentials, and / or encryption keys necessary for full access to materials required for testing; (3) provide any additional documentation or specifications as required; (4) resolve problems found; (5) if necessary, assist in acquiring appropriate use rights for Deposit Materials and/or additional materials required to complete the Test Services; and, (6) identify a person or persons who will be the primary, but not exclusive, contact regarding Test Services (“Depositor Test Services Contact”).

**3. Beneficiary Responsibilities**

Beneficiary shall: (1) interface with Depositor, as required; (2) review escrow agreements, test plans, and test reports as required; (3) if necessary, assist in acquiring appropriate use rights for materials required to complete Test Services; (4) if necessary help provide required software; and, (5) identify a person or persons who will be the primary, but not exclusive, contact regarding Test Services (“Beneficiary Test Services Contact”).

**4. Iron Mountain Responsibilities**

Iron Mountain responsibilities shall include the following: (1) assistance with project planning; (2) performance of Test Services as selected by Test Services Contact and described herein; and, (3) distribution of test reports. Iron Mountain will work directly with the Depositor and/or Beneficiary to identify missing software, Deposit Material, instructions or specifications that Iron Mountain deems necessary to perform the Test Services. Failure of Depositor and/or Beneficiary to provide such additional materials as identified by Iron Mountain within sixty (60) calendar days of the date of execution of this SOW will result in the issuance of an Interim Failed Test Report to the appropriate Test Services Contact.

**5. Resource Requirements**

(a) Software will be provided by Depositor, Beneficiary or Iron Mountain unless otherwise specified:

Provided by:	Required Tools/Software
	Level 2 (Compile)
Iron Mountain	IBM AIX 6.1 or higher
Iron Mountain	Microsoft Windows 7
Iron Mountain	Microsoft Windows 2008
Iron Mountain	Microsoft Windows 2003
Depositor	Powerbuilder 10.5
Open Source	Oracle Java JDK 1.5
Open Source	Oracle Java JDK 1.6
Open Source	Oracle Java JDK 1.8
Depositor	IBM XL C/C++ for AIX 11.1(5724-X13)
Open Source	Apache Maven
Open Source	Sonatype Nexus

Iron Mountain	Oracle Database Engine 11g
Iron Mountain	Oracle Database Engine 12c
Level 4 (Usability)	
Iron Mountain	AIX 6.1 or higher
Iron Mountain	Windows 7
Iron Mountain	Windows Server 2008
Iron Mountain	Windows Server 2003
Open Source	Apache Tomcat 5.5
Open Source	Oracle Java JRE 1.5
Depositor	BMC AR System 7.6.04 SP5 for AIX
Iron Mountain	Oracle 11g Database Engine
Open Source	Perl 5.8.8
Open Source	Oracle Java JRD 1.6
Depositor	WebLogic 12.1.1
Depositor	Edify (version not given)
Depositor	Informatica (version not given)
Depositor	Cognos (version not given)
Depositor	JMS (Assumed to refer to Java Message System – version not given)
Iron Mountain	Oracle Database Engine 11g
Iron Mountain	Oracle Database Engine 12c

(b) Hardware requirements consist of the following:

Level 2 (Compile):

- 3 Intel compatible PC with the following minimum requirements: 2.5 GHz processor, 4GB RAM, 100 GB hard disk, and capability to read a standard CD/DVD-ROM.
- 1 IBM RS/6000: 32 Processors; 1.65 Ghz; 96GB RAM; 600GB Storage

Level 4 (Usability):

- 4 Intel compatible PC with the following minimum requirements: 2.5 GHz processor, 4GB RAM, 100 GB hard disk, and capability to read a standard CD/DVD-ROM.
- 1 IBM RS/6000: 32 Processors; 1.65 Ghz; 96GB RAM; 600GB Storage

(c) Test assumptions include the following:

- All Deposit Material will be provided on CD/DVD ROM or Secure FTP media.
- The software as provided in the deposit media is not bundled in the format of a software configuration management tool (e.g. Subversion, Team Foundation Server, etc.).
- Appropriate versions of all third party tools not identified in the table above as licensed by Iron Mountain will be provided by either the Depositor or Beneficiary or will be available for download from the internet at the time of the verification
- Depositor certifies that an appropriate version of all software identified as available under an "Open Source" license will be available for download at the time of the verification or that depositor will provide an appropriate version of any required Open Source third party tool.
- All third party tools or libraries required to build the escrowed application(s) are documented in the questionnaire or subsequent materials upon which this quotation is based.

**Level 2 Assumptions (Compile):**

- The Deposit Material is to be tested (Level 2) on four build environments – 1 AIX and 3 Windows
- Compilation in each environment is on a single machine for a single operating system.
- Appropriate instructions, of sufficient detail to allow Iron Mountain to configure a build machine and perform the software build will be provided within the Deposit Material or directly to Iron Mountain prior to the conduct of the Level 2 verification.
- A running instance of the Oracle database is required to support compilation; Depositor will provide detailed instructions for the creation and configuration of the Database necessary to support the build process. This will include detailed SQL scripts for configuration of the database and instructions for their use as well as any necessary backup to be imported to populate the database and detailed instructions for their use as well.

**Level 4 Assumptions (Usability):**

- For the Level 4 verification, Iron Mountain will follow instructions to be provided by the Depositor to configure a test environment
- Iron Mountain assumes that this environment can be hosted on a total of 5 Machines running AIX and Windows.

- A suitable database against which to test the software will be provided by either the Depositor or Beneficiary as necessary.
  - Depositor will provide detailed instructions for the creation and configuration of the Oracle Database necessary to support the testing process. This will include detailed SQL scripts for configuration of the database and instructions for their use as well as any necessary backup to be imported to populate the database and detailed instructions for their use as well.
  - For the purposes of this SOW, Iron Mountain assumes that no more than 120 hours of an analyst's time will be required to perform all of the steps required to setup and configure a system suitable to test and evaluate the escrowed software
  - Prior to the conduct of the test, Iron Mountain will be provided clear and unambiguous test procedures that are to be used to verify the correct behavior of the test system.
  - In addition, clear and unambiguous success criteria will be provided.
  - While Iron Mountain will use the success criteria to determine if any significant problems are encountered, Iron Mountain will not attempt to make any determination of the success or failure of the tests.
  - The results of all tests performed will be provided to the Beneficiary in the final verification report: it will be the sole responsibility of the Beneficiary to determine the objective success or failure of the tests.
  - For the purposes of this quotation, Iron Mountain assumes that no more than 40 hours of an analyst's time will be required to perform all of the tests required to evaluate the system.
  - The following connections or external data sources are identified in the questionnaire as necessary for functional testing:
    - Claims files from POS Vendor
    - Drug Data info from FDB
    - Payment Information from Manufacturer/Drug Vendors
    - Connection to Claims Processing Application Database
  - Connections to the above data sources or system or suitable simulations will be provided to support the functional testing.
- (d) Assumptions for Repeat tests:
- The form and format of subsequent deposits to be tested will be identical to the form and format of the original deposit tested. Significant deviations from the form and format of the original deposit may require additional charges at Iron Mountain's standard hourly rate.
  - The database and schema used to support functional testing will not require reloading or repopulation or will be updated as part of the re-deployment process.
  - The set of software tools and application required to configure the functional test environment will not have changed substantially between the original and subsequent deposits. Upgrades of service packs and minor version changes are acceptable. Addition of new tool requirements may require additional charges.
  - No reconfiguration of the functional test environment beyond reloading the updated binary and replacement of any modified scripting files will be required to update the functional test environment sufficiently to support the new testing.
  - Time limitations for performance of functional tests are unchanged.

**6. Test Service and Report Specifications**

- (a) Iron Mountain shall perform the following Test Services:
1. Analysis of deposit material readability
  2. File listing
  3. Creation of a file classification table
  4. Virus Scan
  5. Assurance of a completed Deposit Questionnaire
  6. Analysis of a completed Deposit Questionnaire
  7. Setup, installation and configuration of the test environment
  8. Usability Testing
  9. Conduct a Post Test review meeting
  10. Creation of reports, as detailed below
- (b) Iron Mountain will issue a Final Report of the results from the Test Services consisting of the following:
1. Readability results
  2. A file listing
  3. A file classification table for all media
  4. Results of virus scan
  5. Assurance of a completed Deposit Questionnaire
  6. Analysis of Deposit Questionnaire
  7. Identification and description of apparent shortfalls or potential blocking factors.
  8. Suggestions of necessary items to be included in order to ensure usability of deposit.
  9. Comparison of deposit with items recommended by Iron Mountain Technology Escrow engineer.

**7. Project Cost**

Based on the information provided to Iron Mountain by Test Services Contact and the assumptions set forth above, Iron Mountain has estimated the work required for the Test Services. Additional testing or work beyond the scope contemplated for the Test Services to be performed under this SOW or following the issuance of a failed test report shall require a new SOW for such additional verification or other technology related services. Iron Mountain will only perform additional work upon receipt of the Test Services Contact's written notice of consent to perform such work.

Test Service	Application/Task	Cost Per Test
Level 4	Usability Test	\$ 88,500
Level 4 Repeat Test (Deposit Update)*	Usability Test	\$ 82,800

\* The Level 4 Repeat Test is an optional service and is not charged unless and until requested by Beneficiary via a Work Request executed by Beneficiary and provided to Iron Mountain.

**8. Payment**

Following execution of this SOW, Iron Mountain will invoice either the Beneficiary or Depositor as set forth in the Billing Information Table below ("Paying Party") for the total project cost for each type of the Test Services, as reflected in Section 7 of this SOW. Payment is due net forty-five (45) days from date of invoice, and the Test Services will begin after payment is received. Upon completion of Test Services, Iron Mountain will issue a "Final Report", comprised of either a "Failed Test Report" or "Passed Test Report" based on the Pass/Fail determination of the specified Test Services. If Test Materials are received by Iron Mountain, but payment for Test Services has not been made in full, Iron Mountain will not begin Test Services and will not issue any test report until payment for such Test Services has been made in full. The pricing contained herein applies to the Test Services of the Test Materials specified by the appropriate Test Services Contact. Iron Mountain reserves the right to provide a new quotation for the Test Services to be performed on any updates to the Test Materials. In the event that the Test Services cannot be completed for reasons beyond the control of Iron Mountain, certain fees or portions thereof will be non-refundable. Please refer to Section 9 below entitled, "Testing and Report Generation Process".

**9. Testing and Report Generation Process**

- (a) Upon completion of the Test Services and generation of the Final Report, the Final Report shall be sent to the Depositor for review. Depositor shall have ten (10) business days to provide written notification to Iron Mountain requesting a delay in the release of the Final Report to allow Iron Mountain and Depositor to redact any information that Depositor deems proprietary and confidential. Iron Mountain will make commercially reasonable efforts to prevent the inclusion of information that the Depositor identifies as proprietary and confidential, so long as the integrity of the Final Report is preserved. Upon release of the Final Report, the information contained therein shall become the property of Beneficiary.
- (b) Iron Mountain's test reports will be based solely upon (1) the assumptions contained in this Statement of Work and Appendix A; (2) representations made to Iron Mountain by Beneficiary and/or Depositor during the performance of Test Services and/or drafting of the Statement of Work; (3) Iron Mountain's or its contractors' knowledge of software development.
- (c) Issues or discrepancies may arise that will "delay" and/or "stall" the Test Services and may result in the issuance of a "Failed Test Report" and/or an "Interim Failed Test Report" for said Test Services through no fault of Iron Mountain. In the event the Test Service becomes stalled or delayed due to: (1) failure of Depositor to make required deposit(s) within sixty (60) calendar days of execution of this SOW; (2) failure by Depositor or Beneficiary within sixty (60) calendar days of execution of this SOW to provide appropriate versions of all third party tools not identified in the resource requirements section as licensed by Iron Mountain; and/or, (3) failure to provide within the escrow deposit or directly to Iron Mountain, within sixty (60) calendar days of execution of this SOW, appropriate instructions of sufficient detail to allow Iron Mountain to configure a build machine. Iron Mountain will work directly with the Depositor and/or Beneficiary to acquire necessary tools and/or Deposit Material and/or instructions that are missing in order to perform the Test Services. Failure to provide said Test Materials within sixty (60) calendar days of the date of execution of this SOW will result in issuance of an Interim Failed Test Report to the appropriate Test Services Contact. Iron Mountain will provide periodic Interim Test Reports of such stalled and/or delayed status to the appropriate Test Services Contact. If the Test Services cannot be completed within six (6) calendar months ("Test Performance Period") of the date of execution of this SOW, Iron Mountain will issue a Final Failed Test Report due to non-cooperation or failure to provide applicable Test Materials. At the conclusion of the Test Performance Period and issuance of the Final Failed Test Report, Iron Mountain will retain payment equal to the greater of seventy-five percent (75%) of the total project cost as reflected in Section 7 of this SOW, or one thousand US dollars (\$1,000.00).
- (d) In the event Iron Mountain is unable to initiate the Test Services due to written notice of termination of this SOW and/or termination of the escrow deposit account holding the Deposit Material prior to the first (1st) Interim Failed Test Report, Iron Mountain will issue a Final Failed Test Report reflecting said termination and retain payment equal to the greater of

thirty percent (30%) of the total project cost as reflected in Section 7 of this SOW or one thousand US dollars (\$1,000.00). In the event Iron Mountain receives written notice of termination of the SOW and/or termination of the escrow deposit account holding the Deposit Material after the first (1st) Interim Failed Test Report, Iron Mountain will retain payment equal to the greater of seventy-five percent (75%) of the total project cost as reflected in Section 7 of this SOW or one thousand US dollars (\$1,000.00). In the event that Iron Mountain has received all applicable Test Materials, the Test services are non-cancelable and non-refundable; Iron Mountain will complete Test Services and will issue the applicable Final Report.

**10. General Terms and Conditions of Statement of Work**

All Test Materials are treated in a confidential manner consistent with the Escrow Agreement. All verification project personnel, who are independent contractors of Iron Mountain, are required to sign a non-disclosure agreement to ensure confidentiality of all customer projects. Sensitive documents pertaining to test results and proprietary customer information will be made available to authorized test engineers only. If necessary, Iron Mountain will ship all necessary Deposit Materials to the appropriate testing facility via a commercially recognized overnight carrier such as Federal Express or United Parcel Service. Depositor and Beneficiary will bear the risk of loss or damage of the Deposit Materials.

**11. Use of Materials**

Depositor shall provide Iron Mountain with any use rights or permissions necessary to perform the Test Services. Depositor warrants that Iron Mountain or Iron Mountain's contractors' use of any Deposit Materials, Test Materials or other materials supplied by, or made available by, Depositor, including the software listed in Section 5(a) of this Statement of Work as "Open Source," to perform the services described herein, is lawful and does not violate the rights of any third parties. Depositor consents to Iron Mountain's release to Beneficiary of any build output created in the Level 4. In the event that Beneficiary requests Iron Mountain to install and test the output of the Level 4, Depositor hereby consents to Iron Mountain's installation and testing of the Level 4 build output for the limited purpose of completing Level 4, as described above. For the avoidance of doubt, "build output" as used herein shall mean compiled code. With respect to any build output containing personal information and data, Depositor agrees to (i) procure all necessary consents in relation to personal information and data; and (ii) otherwise comply with all applicable privacy and data protection laws as they relate to the subject matter of this Agreement. Depositor will indemnify Iron Mountain for any loss or claim resulting from Iron Mountain's use of the resources provided by, or made available by, Depositor, including Open Source software, for the performance of the Test Services. Beneficiary shall provide Iron Mountain with any use rights or permissions necessary to perform the Test Services. Beneficiary warrants that Iron Mountain or Iron Mountain's contractors' use of any materials supplied by, or made available by, Beneficiary, to perform the services described herein is lawful and does not violate the rights of any third parties and will indemnify Iron Mountain for any loss or claim resulting from Iron Mountain's use of resources required in the performance of the Test Services. Notwithstanding anything in this Agreement to the contrary, if an applicable law or regulation exists or should be enacted which is contrary to the obligations imposed upon Iron Mountain hereunder, and results in the activities contemplated hereunder unlawful, Depositor will notify Iron Mountain and Iron Mountain will be relieved of its obligations unless and until such time as such activity is permitted.

**12. NO WARRANTY**

IRON MOUNTAIN MAKES NO WARRANTIES WHATSOEVER REGARDING THE MATERIALS THAT IRON MOUNTAIN VERIFIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION: ANY WARRANTY THAT DEPOSITOR'S SOFTWARE (1) IS ERROR-FREE, (2) COMPATIBLE WITH ALL EQUIPMENT AND SOFTWARE CONFIGURATIONS OF BENEFICIARY, (3) WILL FUNCTION WITHOUT INTERRUPTION, OR (4) WILL OPERATE PROPERLY IN CONJUNCTION WITH BENEFICIARY'S CURRENT OR FUTURE OPERATING ENVIRONMENT(S); ANY AND ALL WARRANTIES OF MERCHANTABILITY; AND ANY AND ALL WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.

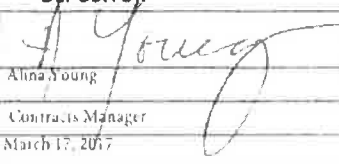
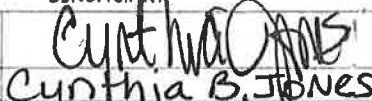
**13. Entire Agreement**


The Statement of Work and all terms and conditions contained herein and the entire Agreement, whose terms are incorporated herein by reference, including, but not limited to those relating to Limitation of Liability and Waiver of Consequential Damages, represents the entire agreement between the Parties with respect to its subject matter, superseding all prior understandings, whether oral or written, and can only be modified by a writing executed by the Parties. All capitalized terms used in this Statement of Work shall be as defined in the Agreement, except as otherwise expressly defined in this Statement of Work. In the event that the terms and conditions of this SOW are found to be in conflict with any terms of conditions of the Agreement, the terms and conditions of this SOW shall control, with respect to the services performed hereunder. This SOW may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

**14. Authority to Sign**


Each of the Parties herein represents and warrants that the execution, delivery, and performance of this SOW has been duly authorized and signed by a person who meets statutory or other binding approval to sign on behalf of its business organization as named in this SOW.

IN WITNESS WHEREOF, the Parties duly authorized representatives have read, understood, accepted, and agreed to Iron Mountain's Statement of Work and all terms and conditions contained herein.

DEPOSITOR		BENEFICIARY	
Signature		Signature	
Print Name	Alina Young	Print Name	Cynthia B. JONES
Title	Contracts Manager	Title	DIRECTOR
Date	March 17, 2017	Date	3/21/2017
Email Address	alyoungemagellanhealth.com	Email Address	Cindi.Jones@dmas.virginia.gov

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.	
Signature	
Print Name	John Riley
Title	Manager, Contract
Date	3/17/17
Email Address	ipmclientservices@ironmountain.com

Approved as to Form and Legal Content:  
Iron Mountain Legal Department




Brian R. Riley, Contracts Specialist  
Date: March 9, 2017

Test Services Contacts			
DEPOSITOR (Required information)		BENEFICIARY (Required information)	
Print Name	Eric Rosenfeld	Print Name	Commonwealth of Virginia, Department of Medical Assistance Services, C/o Donna Proffitt
Title	SVP, Information Technology	Title	DMAS Contract Administrator
Email Address	erosenfeld@magellanhealth.com	Email Address	Donna.Proffitt@dmas.virginia.gov
Street Address	15950 N 76th St., Suite 200	Street Address	600 East Broad Street, Suite 1300
City, State/Province	Scottsdale, AZ	City, State/Province	Richmond, VA
Postal/Zip Code	85260	Postal/Zip Code	23219
Phone Number	480-624-9430	Phone Number	804-371-0428
Fax Number		Fax Number	804-372-2961

Billing Contact – Paying Party	
Print Name	Karen Aubuchon
Title	Manager, Accounts Payable
Email Address	kmaubuchon@magellanhealth.com
Street Address	14100 Magellan Plaza
City, State/Province	Maryland Heights, MO
Postal/Zip Code	63043
Phone Number	314-387-5605
Fax Number	314-387-5407

Approved as to IPM Operational Content:  
Iron Mountain Operations



Name: John Styslinger, Contracts Specialist  
Date: March 9, 2017

## Appendix A

### Deposit Questionnaire

#### *Purpose of Questionnaire*

In order for Iron Mountain to determine the deposit material requirements and to quote fees associated with verification services, a completed deposit questionnaire is requested. It is the responsibility of the escrow depositor to complete the questionnaire.

#### *Instructions*

Please complete the questionnaire in its entirety by answering every question accurately. Upon completion, please return the completed questionnaire to the beneficiary asking for its completion, or e-mail it to your Iron Mountain Account Representative

#### **A. General Description**

1. What is the general function of the software to be placed into escrow?
  - a. Pharmacy Claims Processing, Call Center, Prior Authorization, and Rebate processing
2. On what media will the source code be delivered?
  - a. sFTP
3. If the deposit is on magnetic tape media, what tape format (e.g. DAT DDS4, DLT 8000, LTO-3, etc.) will be used for the deposit?
  - a. N/A
4. Again if the deposit is on tape, what operating system and version was used to create the tape and what tools (either native OS (e.g. tar, cpio, etc.) or commercial (e.g. Backup Exec, NetBackup, AreServ etc.) were used to load the data; if a third party or commercial software tool was used, please specify the vendor and exact version of the tool used.
  - a. N/A
5. Will the deposit be in the format of a database/repository of any type of Versioning or Configuration Management Tool (e.g. Visual Source Safe, Clearcase, Perforce, etc.) or will the software in the deposit be in a clear text/native file system format? If a Versioning or CM tool will be necessary to examine any part the deposit contents, please specify the Vendor and tool and exact version used.
  - a. Powerbuilder Source will be in PBL format
  - a. All others: Clear Text/Native File Format
6. Is the software deposit encrypted, including password protected archives, in any way? If so, what tool and version will be used to perform the encryption and will all necessary userid's, passwords or encryption keys be provided to extract the software?
  - a. No
7. What is the total uncompressed size of the deposit in megabytes?
  - a. Approximately 5.5 GB including some build artifacts

#### **B. Requirements for the Assembly of the Deposit**

1. Describe the nature of the source code in the deposit. (Does the deposit include interpreted code, compiled source, or a mixture? How do the different parts of the deposit relate to each other?) What types of source code make up the escrow deposit (e.g. C++, Java, etc.)
  - a. Claims processing engine in C
  - b. Web Services in Java
  - c. Thick Client in Powerbuilder
  - d. Thin Client in Java
  - e. Batch Processes: C, Java, Perl
  - f. Remedy Scripts that are interpreted by the BMC Remedy Server
  - g. Java
2. How many build processes are there?
  - a. 7
3. How many unique build environments are required to assemble the material in the escrow deposit into the deliverables?

a. 4 (AIX, Windows/Powerbuilder, Remedy, Windows/Java)

4. What hardware is required for each build environment to compile the software? (including memory, disk space, etc.)

**Claims Processing Application:**

Windows - standard dev workstation/laptop

AIX - (Moving to Power 8 in 2017)

System Model: IBM,9117-MMC

Processor Type: PowerPC\_POWER7

Processor Implementation Mode: POWER 7

Processor Version: PV\_7\_Compact

Number Of Processors: 2

Processor Clock Speed: 3304 MHz

CPU Type: 64-bit

Kernel Type: 64-bit

LPAR Info: 4 SLA220CD

Memory Size: 30720 MB

Good Memory Size: 30720 MB

Platform Firmware level: AM770\_076

Firmware Version: IBM,AM770\_076

Builds are staged and performed on /dev/data/v12. This file system stages about 10 distinct build areas as well as a large-ish home area.

A conservative rule of thumb should be that 1/10th of this file system should be sufficient

Disk layout:

Filesystem	1024-blocks	Free	%Used	Used	%Used	Mounted on
/dev/data/v12	197132288	10854136	95%	2610318	40%	/shared
+F8						

**Call Center/Prior Authorization Application:**

System Model: IBM,9117-MMB

Machine Serial Number: 10B165R

Processor Type: PowerPC\_POWER7

Processor Implementation Mode: POWER 7

Processor Version: PV\_7\_Compact

Number Of Processors: 8

Processor Clock Speed: 3108 MHz

CPU Type: 64-bit

Kernel Type: 64-bit

LPAR Info: 1 SLA745PH1

Memory Size: 122880 MB

Good Memory Size: 122880 MB

Platform Firmware level: AM730\_142

Firmware Version: IBM,AM730\_142

Console Login: enable

Auto Restart: true

Full Core: false

**Volume Groups Information**

```
rootvg:
PV_NAME    PV STATE   TOTAL PPs  FREE PPs  FREE DISTRIBUTION
hdisk495   active     679        143       00.00.00.07.136
```

```
data01vg:
PV_NAME    PV STATE   TOTAL PPs  FREE PPs  FREE DISTRIBUTION
hdiskpower0 active     255        198       51.00.45.51.51
hdiskpower118 active    1024         0         00.00.00.00.00
```



hdiskpower119	active	1024	0	00..00..00..00..00
hdiskpower120	active	1024	0	00..00..00..00..00
hdiskpower121	active	1024	0	00..00..00..00..00
hdiskpower122	active	1024	0	00..00..00..00..00

data02vg:

PV_NAME	PV STATE	TOTAL PPs	FREE PPs	FREE DISTRIBUTION
hdiskpower1	active	255	198	51..00..45..51..51
hdiskpower123	active	1024	0	00..00..00..00..00

**Rebate Processing Application:**  
48GB RAM, 500 GB Disk Space

5. What operating systems (including versions) are used during compilation? Is the software executed on any other operating systems? version?
  - AIX 6100-09
  - Windows 7
  - AIX 6.1
  - Windows 2008 Server
  - Windows 2003 server
6. How many separate deliverable components (executables, share libraries, etc.) are built?
  - Claims Processing Application:
    - 100+ executables
    - 60+ shared objects
    - 80+ Perl
    - 2 WAR files
    - 2 JAR files
    - PB (58 dll's, 145 pbd, 1 exe)
  - Call Center/Prior Authorization Application:
    - N/A - Packaged files get installed when during ARServer installation
  - Rebate Processing Application:
    - 1 .ear file
7. What compilers/linkers/other tools (brand and version) are necessary to build the application?
  - Claims Processing Application:
    - PB 10.5
    - Java 1.5 and Java 1.8
    - C++ compiler - qversion
    - IBM XL C/C++ for AIX, V11.1 (5724-X13)
    - Version: 11.01.0000.0018
  - Call Center/Prior Authorization Application:
    - Java SDK 1.6
  - Rebate Processing Application:
    - JDK 1.6 Compiler
    - Maven Build Tool
8. What, if any, third-party libraries are used to build the software? Please specify vendor, tool name and exact or minimum required version. If multiple build environments are required please specify for which environment each tool is required.
  - Claims Processing Application:
    - N/A
  - Call Center/Prior Authorization Application:
    - N/A
  - Rebate Processing Application:
    - Spring, JMS libraries in pom.xml file. Uses Nexus to download dependencies
9. If a database of any kind is necessary to support compilation, is a running instance of the database necessary or is a static instance consisting of the static and shared libraries and/or header files installed by the database sufficient to support compilation? If not already identified above, please provide the vendor and version of the required database.

- Oracle databases are expected to be up and running
10. How long does a complete build of the software take? How much of that time requires some form of human interaction and how much is automated?
- Claims Processing Application:
    - 45 minutes - human involvement is limited to kicking off the jobs
  - Call Center/Prior Authorization Application:
    - Database backups need to be restored by a DBA in order to make the application operational. AIX file backups need to be restored to bring up the application. Application license need to be updated to match the hardware hostid.
  - Rebate Processing Application:
    - 10 Minutes
11. Does the escrow deposit contain formal build document(s) describing the necessary steps for build system configuration and compilation?
- Yes

**C. Requirements for the Execution of the Software Protected by the Deposit**

1. What are the system hardware requirements to successfully execute the software? (memory, disk space, etc.); please include any additional peripheral devices that may be necessary to support correct function of the software/system.
- Claims Processing Application:
    - Same as build environment
  - Call Center/Prior Authorization Application:
    - One - 8 CPU IBM p-Series with 48GB RAM, 500 GB disk space (for FirsTrax)
    - Two - 2 CPU Intel x64 server with 16 GB RAM, 500 GB disk space (for Weblogic)
    - One 2 CPU Intel x86 server with 8 GB RAM, 320 GB disk space (for Edify IVR/Fax)
  - Rebate Processing Application:
    - Same as build environment
2. What is the minimum number of machines required to completely set up the software sufficient to support functional testing? What Operating systems and version are required for each machine?
- Claims Processing Application:
    - 1 AIX and 1 Windows 7 or Windows 2012 r1
  - Call Center/Prior Authorization Application:
    - 1 Machine with AIX 6.1
    - 1 Machine with Windows Server 2008 (for WebLogic 12.1.1)
    - 1 Machine with Windows Server 2003 (for Edify)
  - Rebate Processing Application:
    - 2 machines with Windows 2003 server (for WL 11g)
3. Beyond the operating systems, what additional third party software and tools are required to execute the escrowed software and verify correct operation? Please provide vendor and versions of all third party tools or libraries required to completely configure a system suitable to support functional testing. If multiple machines are required to support testing, please identify the software to be installed to each machine.
- Claims Processing Application:
    - Tomcat 5.5
    - Java 1.5
  - Call Center/Prior Authorization Application:
    - BMC AR System 7.6.04 SP5 for AIX
    - Oracle 11g
    - Perl 5.8.8
    - Java 1.6
    - WebLogic 12.1.1
    - Edify
  - Rebate Processing Application:

- Informatica for data load and Cognos for reporting, JMS for asynchronous messaging
4. Is a database of any kind required to support functional testing of the software? If so please provide the vendor and version required.
    - Oracle 11G & Oracle 12C
  5. If a database is required, does the escrow deposit contain or can the depositor provide scripts and backups/imports necessary to create a database instance suitable to support functional testing.
 

Note: a database containing test data is satisfactory to support functional testing so long as the data is realistic.

    - Yes - Backups
  6. Including the installation of any software tools required to support the function of the escrowed software, approximately how much time is required to setup and configure a system suitable to support functional testing?
    - Claims Processing Application:
      - Assuming the context is claims adjudication and thick client then 4 hours
    - Call Center/Prior Authorization Application:
      - 40 Hours
    - Rebate Processing Application:
      - 32 Hours
  7. Approximately how much time would be required to perform a set of limited tests once a test system is configured?
    - Claims Processing Application:
      - Assuming the context is claims adjudication and thick client then 4 hours
    - Call Center/Prior Authorization Application:
      - 24 Hours
    - Rebate Processing Application:
      - 32 Hours
  8. Does the escrow deposit contain or can the depositor provide test plans, scripts or procedures to facilitate testing?
    - Yes
  9. With the exception of any database identified above, are any connections to external data sources, feeds or sinks required in order to support the proper functioning of the software and to support testing of the software?
    - Claims Processing Application:
      - No
    - Call Center/Prior Authorization Application:
      - Connection to the Claims Processing Application's Database
    - Rebate Processing Application:
      - External data source in terms of Claims Files from the POS Vendor, Drug Data Information from FDB, Payment Information from the Manufactures' Drug Vendors is required

**D. Technical Contact information**

Please list the appropriate technical person(s) from Mountain may contact regarding this set of escrow deposit materials.

COMPANY:	Magellan Rx Management
SIGNATURE:	
PRINT NAME:	Troy Collison
ADDRESS 1:	11013 W Broad Street

<b>ADDRESS 2:</b>	Suite 500
<b>CITY, STATE, ZIP</b>	Glen Allen, VA 23060
<b>TELEPHONE:</b>	804-548-0240
<b>EMAIL ADDRESS:</b>	TECollison@magellanhealth.com

For additional information about Iron Mountain Technical Verification Services, please contact your Iron Mountain Account Representative

**EXHIBIT D**

(Intentionally Left Blank)

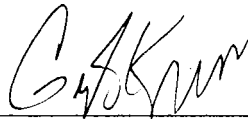
**EXHIBIT E  
CERTIFICATION REGARDING LOBBYING**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- i). No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee or an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.
- ii). If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- iii). The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and Contracts under grants, loans and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature:



Printed Name:

Gregory S. Kaupp, SVP/GM, Government Markets

Organization:

Magellan Medicaid Administration, Inc.

Date:

March 15, 2017

**EXHIBIT F**  
**BUSINESS ASSOCIATE AGREEMENT (BAA) to Contract # 10035**  
**PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION**

**General Conditions**

This BAA ("Agreement" or "BAA") is made as of (mm/dd/yyyy) by the Department of Medical Assistance Services ("Covered Entity"), with offices at 600 East Broad Street, Richmond, Virginia, 23219, and Magellan Medicaid Administration, Inc., ("Business Associate"), with an office at 11013 West Broad Street, Suite 500, Glen Allen, VA 23060. This is a non-exclusive agreement between the Covered Entity, which administers Medical Assistance, and the Business Associate named above.

The Covered Entity and Business Associate, as defined in 45 CFR 160.103, have entered into this Business Associate Agreement to comply with all applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), P.L. 104-191, as amended, the current and future Privacy and Security requirements for such an Agreement, the Health Information Technology for Economic and Clinical Health (HITECH) Act, (P.L. 111-5) Section 13402, requirements for business associates regarding breach notification, as well as our duty to protect the confidentiality and integrity of Protected Health Information (PHI) required by law, Department policy, professional ethics, and accreditation requirements.

DMAS and Business Associate ("parties") shall fully comply with all current and future provisions of the Privacy and Security Rules and regulations implementing HIPAA and HITECH, as well as Medicaid requirements regarding Safeguarding Information on Applicants and Recipients of 42 CFR 431, Subpart F, and Virginia Code § 32.1-325.3. The parties desire to facilitate the provision of or transfer of electronic PHI in agreed formats and to assure that such transactions comply with relevant laws and regulations. The parties intending to be legally bound agree as follows:

- I. Definitions. As used in this agreement, the terms below will have the following meanings:
  - a. Business Associate has the meaning given such term as defined in 45 CFR 160.103.
  - b. Covered Entity has the meaning given such term as defined in 45 CFR 160.103.
  - c. Provider: Any entity eligible to be enrolled and receive reimbursement through Covered Entity for any Medicaid-covered services.
  - d. MMIS: The Medicaid Management Information System, the computer system that is used to maintain recipient (member), provider, and claims data for administration of the Medicaid program.
  - e. Protected Health Information (PHI) has the meaning of individually identifiable health information as those terms are defined in 45 CFR 160.103.
  - f. Breach has the meaning as that term is defined at 45 CFR 164.402.
  - g. Required by law shall have the meaning as that term is defined at 45 CFR 160.103.
  - h. Unsecured Protected Health Information has the meaning as that term is defined at 45 CFR 164.402.
  - i. Transport Layer Security (TLS): A protocol (standard) that ensures privacy between communicating applications and their users on the Internet. When a server and client communicate, TLS ensures that no third party may eavesdrop or tamper with any message. TLS is the successor to the Secure Sockets Layer (SSL).

Terms used, but not otherwise defined, in this Agreement shall have the same meaning given those terms under HIPAA, the HITECH Act, and other applicable federal law.

II. Notices

1. Written notices regarding impermissible use or disclosure of unsecured protected health information by the Business Associate shall be sent via email or general mail to the DMAS Privacy Officer (with a copy to the DMAS contract administrator in II.2) at:

DMAS Privacy Officer, Office of Compliance and Security  
Department of Medical Assistance Services  
600 East Broad Street  
Richmond, Virginia 23219  
hipaaprivacy@dmas.virginia.gov

2. Other written notices to the Covered Entity should be sent via email or general mail to DMAS contract administrator at:

Contact: Donna Proffitt  
Department of Medical Assistance Services 600 East Broad Street  
Richmond, Virginia 23219

### III. Special Provisions to General Conditions

1. Uses and Disclosure of PHI by Business Associate. The Business Associate
  - a. May use or disclose PHI received from the Covered Entity, if necessary, to carry out its legal responsibilities and for the proper management and administration of its business.
  - b. Shall not use PHI otherwise than as expressly permitted by this Agreement, or as required by law.
  - c. Shall have a signed confidentiality agreement with all individuals of its workforce who have access to PHI.
  - d. Shall not disclose PHI to any member of its workforce except to those persons who have authorized access to the information, and who have signed a confidentiality agreement.
  - e. Shall ensure that any agents and subcontractors to whom it provides PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, agree in writing to all the same restrictions, terms, special provisions and general conditions in this BAA that apply to Business Associate. In addition, Business Associate shall ensure that any such subcontractor or agent agrees to implement reasonable and appropriate safeguards to protect Covered Entity's PHI. In instances where one DMAS Business Associate is required to access DMAS PHI from another DMAS Business Associate, the first DMAS Business Associate shall enter into a business associate agreement with the second DMAS Business Associate.
  - f. Shall provide Covered Entity access to its facilities used for the maintenance and processing of PHI, for inspection of its internal practices, books, records, and policies and procedures relating to the use and disclosure of PHI, for purpose of determining Business Associate's compliance with this BAA.
  - g. Shall make its internal practices, books, records, and policies and procedures relating to the use and disclosure of PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary of Department of Health and Human Services (DHHS) or its designee and provide Covered Entity with copies of any information it has made available to DHHS under this section of this BAA.
  - h. Shall not directly or indirectly receive remuneration in exchange for the provision of any of Covered Entity's PHI, except with the Covered Entity's consent and in accordance with 45 CFR 164.502.



- i. Shall make reasonable efforts in the performance of its duties on behalf of Covered Entity to use, disclose, and request only the minimum necessary PHI reasonably necessary to accomplish the intended purpose with the terms of this Agreement.
  - j. Shall comply with 45 CFR 164.520 regarding Notice of privacy practices for protected health information.
- 2. Safeguards - Business Associate shall
  - a. Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity as required by the HIPAA Security Rule, 45 CFR Parts 160, 162, and 164 and the HITECH Act.
  - b. Include a description of such safeguards in the form of a Business Associate Data Security Plan.
  - c. In accordance with the HIPAA Privacy Rule, the Security Rule, and the guidelines issued by the National Institute for Standards and Technology (NIST), Business Associate shall use commercially reasonable efforts to secure Covered Entity's PHI through technology safeguards that render PHI unusable, unreadable and indecipherable to individuals unauthorized to access such PHI.
  - d. Business Associate shall not transmit PHI over the Internet or any other insecure or open communication channel, unless such information is encrypted or otherwise safeguarded using procedures no less stringent than described in 45 CFR 164.312(e).
  - e. Business Associate shall cooperate and work with Covered Entity's contract administrator to establish TLS-connectivity to ensure an automated method of the secure exchange of email.
- 3. Accounting of Disclosures - Business Associate shall
  - a. Maintain an ongoing log of the details relating to any disclosures of PHI outside the scope of this Agreement that it makes. The information logged shall include, but is not limited to;
    - i. the date made,
    - ii. the name of the person or organization receiving the PHI,
    - iii. the recipient's (member) address, if known,
    - iv. a description of the PHI disclosed, and the reason for the disclosure.
  - b. Provide this information to the Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
- 4. Sanctions - Business Associate shall
  - a. Implement and maintain sanctions for any employee, subcontractor, or agent who violates the requirements in this Agreement or the HIPAA privacy regulations.
  - b. As requested by Covered Entity, take steps to mitigate any harmful effect of any such violation of this agreement.
- 5. Business Associate also agrees to all of the following:
  - a. In the event of any impermissible use or disclosure of PHI or breach of unsecured PHI made in violation of this Agreement or any other applicable law, the Business Associate shall notify the DMAS Privacy Officer
    - i. On the first day on which such breach is known or reasonably should be known by Business Associate or an employee, officer or agent of Business Associate other than the person committing the breach, and

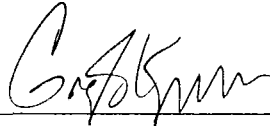
- ii. Written notification to DMAS Privacy Officer shall include the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Contractor to have been, accessed, acquired, used or disclosed during the breach. Business Associate shall confer with DMAS prior to providing any notifications to the public or to the Secretary of HHS.
  - b. Breach Notification requirements.
    - i. In addition to requirements in 5.a above, in the event of a breach or other impermissible use or disclosure by Business Associate of PHI or unsecured PHI, the Business Associate shall be required to notify in writing all affected individuals to include,
      - a) a brief description of what happened, including the date of the breach and the date the Business Associate discovered the breach;
      - b) a description of the types of unsecured PHI that were involved in the breach;
      - c) any steps the individuals should take to protect themselves from potential harm resulting from the breach;
      - d) a brief description of what Business Associate is doing to investigate the breach, mitigate harm to individuals, and protect against any future breaches, and, if necessary,
      - e) Establishing and staffing a toll-free telephone line to respond to questions.
    - ii. Business Associate shall be responsible for all costs associated with breach notifications requirements in 5b, above.
    - iii. Written notices to all individuals and entities shall comply with 45 CFR 164.404(c)(2), 164.404(d)(1), 164.406, 164.408 and 164.412.
- 6. Amendment and Access to PHI - Business Associate shall
  - a. Make an individual's PHI available to Covered Entity within ten (10) days of an individual's request for such information as notified by Covered Entity.
  - b. Make PHI available for amendment and correction and shall incorporate any amendments or corrections to PHI within ten (10) days of notification by Covered Entity per 45 CFR 164.526.
  - c. Provide access to PHI contained in a designated record set to the Covered Entity, in the time and manner designated by the Covered Entity, or at the request of the Covered Entity, to an individual in order to meet the requirements of 45 CFR 164.524.
- 7. Termination
  - a. Covered Entity may immediately terminate this agreement if Covered Entity determines that Business Associate has violated a material term of the Agreement.
  - b. This Agreement shall remain in effect unless terminated for cause by Covered Entity with immediate effect, or until terminated by either party with not less than thirty (30) days prior written notice to the other party, which notice shall specify the effective date of the termination; provided, however, that any termination shall not affect the respective obligations or rights of the parties arising under any Documents or otherwise under this Agreement before
  - c. Within thirty (30) days of expiration or earlier termination of this agreement, Business Associate shall return or destroy all PHI received from Covered Entity (or created or received by Business Associate on behalf of Covered Entity) that Business Associate still maintains in any form and retain no copies of such PHI.

- d. Business Associate shall provide a written certification that all such PHI has been returned or destroyed, whichever is deemed appropriate by the Covered Entity. If such return or destruction is infeasible, Business Associate shall use such PHI only for purposes that make such return or destruction infeasible and the provisions of this agreement shall survive with respect to such PHI.
8. Amendment
    - a. Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or the publication of any decision of a court of the United States or of this state relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, Covered Entity may, by written notice to the Business Associate, amend this Agreement in such manner as Covered Entity determines necessary to comply with such law or regulation.
    - b. If Business Associate disagrees with any such amendment, it shall so notify Covered Entity in writing within thirty (30) days of Covered Entity's notice. If the parties are unable to agree on an amendment within thirty (30) days thereafter, either of them may terminate this Agreement by written notice to the other.
  9. Indemnification. Business Associate shall indemnify and hold Covered Entity harmless from and against all claims, liabilities, judgments, fines, assessments, penalties, awards, or other expenses, of any kind or nature whatsoever, including, without limitation, attorney's fees, expert witness fees, and costs of investigation, litigation or dispute resolution, relating to or arising out of any breach or alleged breach of this Agreement by Business Associate.
  10. This Agreement shall have a document, attached hereto and made a part hereof, containing the following:
    - a. The names and contact information for at least one primary contact individual from each party to this Agreement.
    - b. A complete list of all individuals, whether employees or direct contractors of Business Associate, who shall be authorized to access Covered Entity's PHI
    - c. A list of the specific data elements required by Business Associate in order to carry out the purposes of this Agreement.
    - d. The purposes for which such data is required.
    - e. A description of how Business Associate intends to use, access or disclose such data in order to carry out the purposes of this Agreement.

Business Associate agrees to update the above noted information as needed in order to keep the information current. Covered Entity may request to review the above-referenced information at any time, including for audit purposes, during the term of this Agreement.

11. Disclaimer. COVERED ENTITY MAKES NO WARRANTY OR REPRESENTATION THAT COMPLIANCE BY BUSINESS ASSOCIATE WITH THIS AGREEMENT OR THE HIPAA REGULATIONS WILL BE ADEQUATE OR SATISFACTORY FOR BUSINESS ASSOCIATE'S OWN PURPOSES OR THAT ANY INFORMATION IN BUSINESS ASSOCIATE'S POSSESSION OR CONTROL, OR TRANSMITTED OR RECEIVED BY BUSINESS ASSOCIATE, IS OR WILL BE SECURE FROM UNAUTHORIZED USE OR DISCLOSURE, NOR SHALL COVERED ENTITY BE LIABLE TO BUSINESS ASSOCIATE FOR ANY CLAIM, LOSS OR DAMAGE RELATED TO THE UNAUTHORIZED USE OR DISCLOSURE OF ANY INFORMATION RECEIVED BY BUSINESS ASSOCIATE FROM COVERED ENTITY OR FROM ANY OTHER SOURCE. BUSINESS ASSOCIATE IS SOLELY RESPONSIBLE FOR ALL DECISIONS MADE BY BUSINESS ASSOCIATE REGARDING THE SAFEGUARDING OF PHI.

Signature:



Printed Name:

Gregory S. Kaupp, SVP/GM Government Markets

Organization:

Magellan Medicaid Administration, Inc.

Date:

March 15, 2017

#####

End of Document

**ATTACHMENT**

*(To be completed by Business Associate)*

DMAS/Magellan Medicaid Administration  
Master BAA Contract #10035  
3/14/2017

**Reference Section III Special Provisions to General Conditions**

10. This Agreement shall have a document, attached hereto and made a part hereof, containing the following:

- a. The names and contact information for at least one primary contact individual from each party to this Agreement.

Contact: Donna Proffitt  
Department of Medical Assistance Services  
600 East Broad Street  
Richmond, Virginia 23219  
804 371-0428  
[Donna.Proffitt@dmas.virginia.gov](mailto:Donna.Proffitt@dmas.virginia.gov)

Contract: 10030  
Contact: Debbie Moody  
Contractor: Magellan Medicaid Administration  
Address: 11013 W. Broad St, Suite 500, Glen Allen, VA 23060  
Phone Number: (804) 548-0453  
Email Address: [dfmoody@magellanhealth.com](mailto:dfmoody@magellanhealth.com)

- b. Complete list of all individuals, whether employees or direct contactors, of Business Associate who shall be authorized to access Covered Entity's PHI.

Abernathy, Stephanie	Debbie Mills	Jackson, Kenitra	Nunez, Leland
Alston, Monica	Dickson, Michele	Jason Posey	Patel, Ashlesh
Austin, Mary	Diggs, Sonya	Jeffries, Keishaundra	Perkins, Carol
Barnes-Crockett, Cynthia	Don Moore	Jennifer Rock	Reid, Jonelle
Battle, Israel	Dowd, Barbara	Jeter, Lezli	Reinikovas, Ruta
Baugh, Kimberly	Dunlea, Lea	Joe McGee	Shelton, Shanice

Baughman, Linda	Eaton, Tonya	Johnson, Sam	Simon, Charissa
Beaver, Ivette	Eavey, Leslie	Jones-Lewis, Michele	Smith, Elizabeth
Bernadine clay	Eldin, Nancy	Kathey Fields	Smith, Patricia
Berrien, Mary	Elena Uvarova	Koren, Debra	Smith, Tamieya
Beverly Buckley	Eric Brundige	Lewis, Max	Steve Pratt
Booker, Fatima	Felcia DiPaolo	Lori Brown	Suits, Chris
Boscana, Jessica	Fields, Sean	Lowe, Sarah	Sylvia Brown
Boyd, Tianesha	Ford, Amesha	Lynn Brichfield	Talley, Teresa
Brown, Doug	Fortune, Mae	Maria Hogan	Tammy Freeman
Brown, Estella	Fortune, Sherry	Martin, Steven	Tammy West
Brown, Nicky	Gaines, Ronita	Martini, Wilma	Taylor, Judy
Brown, Thelma	Gainyard, Lameca	Massenburg-Pride, Darkeesha	Taylor, Melinda
Bryant, Lloyd	Garvin, Clifford	Mathew Ayotte	Toombs, Tenesha
Bui, Debbie	Gillison, Anthony	Maury Anderson	Trent, Porsche
Burt, Phonica	Gonzales, Miranda	McCargo, Melayna	Vaughan, Bianca
Carroll, Carolyn	Gravitt, Mark	McCoy, Lorraine	Vaughn, Laverne
Cherilyn Lee	Hamilton, Kim	McEachin, Tamara	Wampler, Randy
Chris Moore	Harris, Deborah	McKlveen, Rachel	Webster, Natalie
Christy Johnson	Harris, Kenishia	McWhirter, Nichole	Wheeler, Kelsey
Churchwell, Tyquan	Harris, Kim	Meredith, Beth	Williams, Tonya
Claudia Soto	Harrison, Jade	Michelle Williams	Winfield, Shanna
Cox, Stephanie	Hawkins, Tiara	Minter, Pamela	Wright, Tameka
Creig Chern	Hazly, Nickyah	Moody, Debbie	Young, Tempestt
Crossland, Sharon	Hemphill, Doris	Naveet Singh	
Dameron, John	Holmes, Dorothy	Navneet Singh	
David Pinkston	Hunt, Almeta	Nguyen, Kim	

- c. List of the specific data elements required by Business Associate in order to carry out the purpose of this Agreement.

All data elements concerning administering the Pharmacy Benefit Management Solution to develop, manage and maintain a fully functional Pharmacy Benefit Management Solution for DMAS, including but not limited to: PBMS General Processing (transfer and maintenance of files, Project Design, Development, and Implementation Testing Overview, Change Management, IV&V/CMS Reviews and Certification Audit Support, Turnover, Technology, Electronic Data Interchange, Documentation Management, Enterprise Data Warehouse, Conversion), DUR/Clinical/Utilization Management, Service Authorization, Third Party Liability (TPL), Encounters, Drug Rebate.

d. Purposes for which such data is required.

To develop, manage and maintain a fully functional Pharmacy Benefit Management Solution for DMAS, including but not limited to: PBMS General Processing (transfer and maintenance of files, Project Design, Development, and Implementation Testing Overview, Change Management, IV&V/CMS Reviews and Certification Audit Support, Turnover, Technology, Electronic Data Interchange, Documentation Management, Enterprise Data Warehouse, Conversion), DUR/Clinical/Utilization Management, Service Authorization, Third Party Liability (TPL), Encounters, Drug Rebate.

e. Description of how Business Associate intends to use access or disclose such data in order to carry out the purposes of this Agreement.

All information is used for its intended use and is only disclosed to the recipients' physicians or authorized agents, to the recipients themselves or to DMAS staff.

**EXHIBIT G - CLOUD SERVICES**  
**ADDITIONAL CONTRACT TERMS AND CONDITIONS**  
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**Attachment A, Table of Service Levels and Remedies for Licensed Services**

**Attachment B, Table Of Service Levels, Response And Resolution Times and Escalation Procedures For Licensed Services**



**EXHIBIT G - CLOUD SERVICES**  
**ADDITIONAL CONTRACT TERMS AND CONDITIONS**

These additional terms and conditions for provision of Cloud Services as part of Supplier's contractual obligations for an overall solution provided by the Supplier are in support of and incorporated herewith under Contract No. 10035. This Exhibit ("Exhibit") sets forth additional terms and conditions under which Supplier shall provide such Licensed Services ("Licensed Services") to Department of Medical Assistance Services (DMAS).

**1. DEFINITIONS**

**A. Acceptance**

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

**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 of the Contract, including any Updates, enhancements, and replacements to the Application.

**C. Application Users**

Application Users shall include employees of DMAS, independent contractors engaged by DMAS, or entities contracting with DMAS for services, as well as DMAS 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. 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.

**F. Supplier Product**

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

**G. Update**

As applicable, any update, modification or new release of the 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 Application and Licensed Services.

**H. VITA**

Virginia Information Technologies Agency.

**I. Web Site**

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

## **2. TERM AND TERMINATION**

### **A. Scalability**

DMAS may make a written request to increase or decrease the scope (e.g., number of USERIDs) of Licensed Services ("revised usage") under a change order to the Contract. The revised usage shall be effective not more than one (1) business hour following the request. Pricing for the revised usage of Licensed Services shall be calculated as provided in the Pricing Schedule of the Contract and shall be prorated on a daily basis for remaining portion of the current monthly billing period. For purposes of this provision, a written notice may include an e-mail or the use of a Supplier-provided provisioning website by DMAS designated administrator.

## **3. DESCRIPTION OF LICENSED SERVICES**

During the term of this Contract, Supplier hereby agrees to host the Application(s) listed and described in Exhibit A and as specified in the Contract 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 obligated by the Contract.

Supplier hereby grants to DMAS and its Application Users a non-exclusive, transferable, worldwide license to access and use by any method the Application during the term of the 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 and legislative, judicial, and independent agencies 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 of Virginia, 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 the Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance 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 in this Contract and any amendments or modifications thereto shall supersede and govern licensing and use of all products and services hereunder.

## **4. SUPPLIER RESPONSIBILITIES**

### **A. Standard Application Responsibilities**

Unless otherwise indicated in the requirements section of the Contract, 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. In addition:

- 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 authorized under the Contract. 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 shall extend beyond the term of the Contract.
- iv). The Application will be made available to DMAS and its designated Application Users 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 (i) an electronic hardware failure, (ii) a failure in the Supplier's Application, (iii) an electric utility failure at Supplier's facility where the Application is hosted, or (iv) 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. Supplier 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.

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 an DMAS or another party.

## **B. Ancillary Responsibilities**

Supplier shall, throughout the term of this Contract, 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 the Contract or any exhibit hereto or as agreed to by Supplier and DMAS; and (iii) otherwise support the Application as provided under this Contract and any exhibits hereto or as agreed to between Supplier and DMAS.

## **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 any part of this Contract is supported in whole or in part with federal funds, Supplier shall not subcontract any Services 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.

## **5. 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 this Contract.

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

- i). 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.
- ii). DMAS shall have the right to add, change access for, or delete USERIDs at its sole discretion. DMAS shall designate administrators who will be authorized to add, change access for or delete USERIDs.
- iii). Upon notification by DMAS of an Application User's deletion, Supplier shall remove said Application User from its server within one (1) hour of receipt of such notification. If Supplier fails to make such a deletion, DMAS shall not be held liable for any charges or damages incurred due to use of the unauthorized USERID.

## **6. 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 Commonwealth's security standards located at:

<https://www.vita.virginia.gov/library/default.aspx?id=537> 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.
- 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.
- 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, 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](mailto: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.  
<http://www.vita.virginia.gov/library/default.aspx.id=537#securityPSGs>
- 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. The 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 DMAS, Supplier shall provide a non-redacted copy of current AICPA SOC-2 (Type 2) audit. Supplier shall assist DMAS 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.
- xxxv). Supplier understands that DMAS 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. <http://www.vita.virginia.gov/library/default.aspx.id=537#securityPSGs>.
- 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). Supplier's failure to comply with the provisions in items (i) through (xl) shall constitute a breach of the Contract.
- xliii). Within fifteen (15) business days after the expiration or termination of this Contract, Supplier shall confirm in writing to DMAS that all Content has been removed from all systems where the Content resided during performance of this Contract in a manner that complies with and/or exceeds the Commonwealth Data Removal standard located at the following URL: <http://www.vita.virginia.gov/library/default.aspx.id=537#securityPSGs>. The written confirmation shall include (i) sufficient detail describing the processes and procedures used in removing the Content, (ii) information about the locations of where it was removed from within the Application and storage and other locations, and (ii) the date the removals were performed. All metadata, in its original form, shall be returned to DMAS.
- xliv). DMAS and Application Users 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 agrees to provide Supplier the opportunity to participate in the investigation of the reported situation.
- xlv). Regular training for Supplier personnel regarding the security and data recovery programs referenced in this Section.
- xlvi). Regular testing of the systems and procedures outlined in this Section; and
- xlvii). Audit controls that record and monitor Application and Licensed Services activity continuously.

## 7. 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 DMAS Content, and an Application User may reproduce and distribute any Application output generated pursuant to the permissions set forth in the Contract;
- 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 the Contract;
- 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 the Contract, 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.

## **8. TRANSITION ASSISTANCE**

Upon execution of this Contract, Supplier and DMAS will develop a transition plan ("Transition Plan") detailing each party's respective tasks for the orderly transition and migration of (i) all Content stored by Supplier pursuant to the Contract to DMAS archive and/or to a system or application maintained by DMAS or a third party application service provider and agreed in writing by DMAS and Supplier, (ii) the Application and Licensed Services to DMAS or a third party service provider when such transition and migration to occur upon termination or expiration of the Contract.

At a minimum, the Transition Plan shall provide that upon expiration or termination of this Contract for any reason, Supplier will return all Content in its possession to DMAS in a format accessible without the use of Supplier's Application. In addition, Supplier will, at DMAS option, continue to provide Licensed Services for up to six (6) months after the date of expiration or termination of the Contract in order to facilitate DMAS transition to a new service provider. Supplier shall also provide such reasonable assistance as may be requested by DMAS to effectuate such transition.

Supplier shall, within thirty (30) days of expiration, completion, or termination of this Contract provide to all DMAS a complete set of all Content provided to Supplier by DMAS and/or its Application Users and stored by the Application on behalf of DMAS. Supplier's failure to do so shall constitute a material breach of this Contract and, in addition to the remedies set forth in this Contract, DMAS may exercise all available rights and remedies under law and equity.

The obligations set forth in this section and in any Transition Plan developed pursuant to the Contract may extend beyond expiration or termination of the Contract for a period not to exceed six (6) months. In the event of a termination for breach and/or default of Supplier, Supplier shall perform such obligations at no charge or fee to DMAS; otherwise, Supplier shall perform such obligations at the hourly rate or a charge agreed upon by Supplier and DMAS.

## **9. COMMENCEMENT AND ACCEPTANCE OF LICENSED SERVICES**

### **A. 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. DMAS may delay the Licensed Services commencement date by notifying the Supplier at least ten (10) days before the scheduled Licensed Services commencement date.

### **B. Acceptance**

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 XX (XX) 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. 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). DMAS shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing. Should DMAS fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) business days following the Acceptance testing period, the Service shall be deemed Accepted.

### **C. 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. 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.

## **10. RECORDS AND AUDIT**

Supplier shall maintain accurate records and other evidence pertaining to the costs and expenses for all Licensed Services performed/delivered under this Contract in support of its charges invoiced to DMAS. The records will be to the extent and in such detail as will properly reflect all direct and indirect costs associated with the Contract. 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. DMAS shall have the right, at any reasonable time during regular business hours after giving reasonable advance notice, to inspect and audit the records applicable to the Contract. Supplier shall preserve such records for three (3) years after termination/completion of the Licensed Services agreed to under this Contract.

## **11. APPLICATION AND LICENSED SERVICES SUPPORT**

At any time during the term of 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 of the Contract.

### **A. Coverage**

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

### **B. Service Levels**

Within one (1) hour after a request from DMAS or VITA, Supplier will 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 Attachment B, Table of Service Levels, Response and Resolution Times and Escalation Procedures for Licensed Services. In each case, DMAS may describe the problem by telephone or electronic mail or via a web site provided by Supplier. Supplier shall use its best efforts/commercially reasonable efforts to meet Response Time and Resolution Time and other obligations under this Contract.

The level of severity (e.g., 1, 2, 3), shall 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.

## **12. SERVICE LEVELS AND REMEDIES**

### **A. Availability**

Supplier’s failure to make the Licensed Services Available to DMAS and its Application Users at least 99% of the time in any given month during the term of the Contract, excluding scheduled maintenance or excusable downtime, shall be deemed a service level default (“Service Level Default”) and DMAS may obtain the non-exclusive remedies set forth in Attachment A , 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.

In the event DMAS is eligible for a 100% Service Level Credit under this Section during any given month of the term the Contract, DMAS may terminate the Contract 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.

Credits shall be applied against the next invoice. 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 shall 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, moves or reductions 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**

Once each calendar month during the term of this Contract, Supplier shall provide DMAS with a written report that shall contain information with respect to the performance of the Application and Licensed Services. Supplier shall submit a copy of each report VITA at:

[enterpriseservices@vita.virginia.gov](mailto:enterpriseservices@vita.virginia.gov). 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. 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, 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 for any other matters related to this Contract that may be reasonably requested by either Supplier or DMAS. Supplier shall notify VITA of such meetings by email to: [enterpriseservices@vita.virginia.gov](mailto: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**

DMAS will be notified within one (1) hour of event. CIM will create a System Incident Report (SIR) and distribute to Supplier's account management staff within forty-eight (48) hours of the resolution. Supplier's internal steps will be included in DDI implementation documents.

**13. 12. CYBER SECURITY LIABILITY INSURANCE**

In addition to other insurance coverage requirements in the Contract, Supplier shall carry Cyber Security Liability insurance coverage in the amount of \$5,000,000 per occurrence.

## 14. ESCROW AGREEMENT

Supplier shall maintain copies of all Application source code and related technical and user Documentation, in English, in an escrow account, and shall maintain with escrow agent the executed agreement attached hereto as Exhibit C (Escrow Agreement). Supplier shall maintain, in a separate escrow account for DMAS, copies of all Content provided by or to DMAS in a format accessible without use of Supplier's Application. An executed agreement for providing for any such Content Escrow Agreement is attached hereto as Exhibit C (Escrow Agreement).

DMAS acknowledges that, prior to the Effective Date of this Contract, Supplier delivered to DMAS and DMAS received a copy of the executed Application Escrow Agreement naming the Commonwealth of Virginia as a third party beneficiary. DMAS has reviewed the Application Escrow Agreement to ensure that such Application Escrow Agreement does not impose upon the Commonwealth any requirements other than administrative responsibilities necessary for the operation of the Application Escrow Agreement. If events give rise to a need for the escrow agent to release escrowed materials to the Commonwealth, the Commonwealth's sole responsibility shall be to request the release of such materials from the escrow agent. Supplier agrees to notify DMAS in writing not less than thirty (30) calendar days prior to termination or any modification of the Application Escrow Agreement.

Any Content Escrow Agreement shall name as a third party beneficiary DMAS whose Content is kept in escrow pursuant to such Content 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 pursuant to the Escrow Agreement are specifically identified and listed in Attachment A to the Application Escrow Agreement and include the most current version used by DMAS of:

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

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

- i). File List Test - To ensure the deposited items are catalogued and confirm they are readable and virus free, and if encrypted, that the Escrow Agent has the decryption keys on deposit.
- ii). Inventory and Analysis Test – To provide a complete audit and inventory of the deposit including analysis of deposited media to verify the presence of build instructions, to identify all of materials necessary to recreate the original development environment and to confirm the presence of all build instructions, file classification tables, database schema and listings.
- iii). Compile Test – To validate whether the development environment can be recreated from the deposited documentation and files; to identify third-party libraries, to recreate the Supplier's

development environment; to compile source files and modules, to recreate executable code and to prepare a complete list of any hardware or software configurations.

iv). Binary Comparison Test – To test the functionality of the compiled deposit materials by comparing the files built in compile testing to the licensed, executable file running at DMAS site.

v). Full Usability Test – To confirm the source code placed in escrow will be fully functional in the event of a release and to perform a relevant series of tests to ensure that replicated software runs properly in the required DMAS environment.

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

vii). Fault Remedy – To collaborate with Supplier on fixing any faults discovered during the testing, to obtain corrected escrow items and to re-perform any verification tests as necessary until all tests are successful, with written detailed reports to DMAS.

Supplier warrants that the information and materials to be kept in escrow in a media safe environment for the benefit of DMAS pursuant to a Content Escrow Agreement shall be specifically identified and listed in Attachment A to such Content Escrow Agreement and include a monthly back up of the Content repository for DMAS. Supplier warrants that the Escrow Agreements provide or shall provide for, among other items, the release of the list of items on Attachment A of each Escrow Agreement which could occur upon the happening of certain events, including, but not limited to, Supplier's failure to carry out its support and maintenance obligations imposed by this Contract for a period of sixty (60) days, Supplier's breach or default under this Contract, Supplier's bankruptcy and/or Supplier's failure to continue to do business in the ordinary course. Any Content Escrow Agreement shall also provide for the release of the escrowed items in the event the DMAS Content is destroyed, lost, or damaged or following the termination or expiration of this Contract for Licensed Services. Supplier agrees to pay all expenses associated with establishing and maintaining the escrow accounts and the contents mentioned above.

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

## **15. GENERAL WARRANTY**

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

### **A. 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 the 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 the requirements of this Contract 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 and 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 has specified an older version in the Contract;

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, 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.

#### **B. 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.

#### **C. 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.

#### **D. 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 term of this Contract. Supplier further warrants that the Application and Licensed Services are compatible with and will operate successfully on the equipment.

### **16. ACCEPTABLE USE POLICY (IF APPLICABLE)**

DMAS agrees to abide by Supplier's Acceptable Use Policy (AUP), as amended by the parties hereby and incorporated as Exhibit C of the Contract. 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 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 receiving Services under this Agreement;

If Supplier fails to 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, without termination liability;

## ATTACHMENT A

### TABLE OF SERVICE LEVELS AND REMEDIES FOR LICENSED SERVICES

PBMS-SLA-001	Online user interface response time	> 4 seconds at the demarcation of the Commonwealth firewall	2% of monthly contract value
PBMS-SLA-002	Point of Sale claim adjudication system availability	100% availability (excluding pre-approved scheduled downtime)	1% of annual contract value per hour or partial hour
PBMS-SLA-003	Service Authorization 24 hour response compliance	All Service Authorization requests receive a Contractor response in less than 24 hours measured from date/timestamp of receipt to date/timestamp of response	1% of monthly contract value per Service Authorization Contractor response > 24 hours
PBMS-SLA-004	<p>Complete all scheduled batch or file load jobs (schedule to be determined and mutually agreed upon)</p> <p>The definition of the batch jobs to be included in each category will be defined during the requirements phase.</p> <p>Category 1: Mission critical processes, such as drug file, provider file(s), encounter transactions</p> <p>Category 2: Reports</p>	<p>&lt; 100% on time in category</p> <p>System generated batch job complete per schedule</p>	<p>Category 1: 2% of monthly contract value</p> <p>Category 2: 1% of monthly contract value</p>
PBMS-SLA-005	All Pharmacy Benefit Management Solution defined reports shall be available online or delivered to the ECM system by scheduled time as defined and mutually agreed upon	<p>&lt; 100% on time</p> <p>System generated start and end date/time</p>	1% of monthly contract value per incident
PBMS-SLA-006	<p>Send out mailings:</p> <ul style="list-style-type: none"> <li>➤ Service Authorization Letters/Notifications</li> <li>➤ DUR Board documentation</li> <li>➤ P&amp;T Committee documentation</li> </ul>	<p>&lt; 100% on time mailed</p> <p>&gt; 1 business day after transaction triggers letter generation</p>	2% of monthly contract value per incident



<p>PBMS-SLA-007</p>	<p>Compliance with Federal and State Drug Utilization Review policies and procedures</p> <ul style="list-style-type: none"> <li>➤ Deliver Contractor’s standard ProDUR and RetroDUR reports, that demonstrate compliance throughout the life of the contract with 42 CFR Part 456, Subpart K - Drug Use Review (DUR) Program and Electronic Claims Management System for Outpatient Drug Claims Sections 456.700 through 456.711 and any subsequent modifications to CMS guidance or regulation of the DUR program.</li> </ul> <hr/> <ul style="list-style-type: none"> <li>➤ Deliver DUR Board and P&amp;T Committee materials (agenda, therapeutic class reports, etc...) to DMAS for review, comment and approval</li> </ul> <hr/> <ul style="list-style-type: none"> <li>➤ Deliver Contractor’s content required to complete the Medicaid Drug Utilization Review Annual Report Survey as defined in 42 CFR Part 456, Subpart K - Drug Use Review (DUR) Program and Electronic Claims Management System for Outpatient Drug Claims Section 456.712 and any subsequent modifications to CMS guidance or regulation of the DUR program on the schedule defined in requirement PBMS-DUR-032.</li> </ul>	<p>Per error, inaccuracy, or failure to meet Federal guidance related to 42CFR Part 456, Subpart K identified in Contractor report(s) or failure to deliver Contractor standard ProDUR or RetroDUR reports for DMAS review on timelines established in Appendix J.</p> <p>Delivery of draft materials &lt; 30 days prior to meeting date and delivery of DMAS approved final materials &lt; 7 days prior to meeting date.</p> <p>Delivery to DMAS of Contractor content required to complete the Medicaid Drug Utilization Review Annual Report Survey on the following schedules:</p> <ol style="list-style-type: none"> <li>1. Draft content delivered &lt;120 calendar days prior to CMS submission due date</li> <li>2. Final content delivered &lt;60 calendar days prior to CMS submission due date.</li> </ol>	<p>1% of annual contract value per incident</p> <p>1% of annual contract value per incident</p> <p>1% of annual contract value per incident</p>
<p>PBMS-SLA-008</p>	<p>MES critical batch transactional data exchange delivery during agreed upon uptime</p>	<p>&lt; 100% of time</p>	<p>2% monthly contract value</p>

PBMS-SLA-009	<p>Post of real-time transaction data to the ISS Contractor shall not exceed specified time frame based on the category of the service. The definition of the transactions to be included in each category will be defined during the requirements phase.</p> <p>Category 1: less than or equal to 1 second</p> <p>Category 2: less than or equal to 3 seconds</p> <p>Category 3: less than or equal to 6 seconds</p> <p>Category 4: less than or equal to 20 seconds</p>	All transactions in a category meet the measurement in a clock hour	2% of monthly contract value
PBMS-SLA-010	<p>Posting of batch files to the ISS Contractor shall not exceed specified time frame based on the category of the service. The definition of the batch files to be included in each category will be defined during the requirements phase.</p> <p>Category 1: mission critical processes less than or equal to 60 minutes</p> <p>Category 2: low priority processes less than or equal to 4 hours</p>	Any batch file in a category exceeds the measurement time frame	2% of monthly contract value
PBMS-SLA-011	<p>Call Center/Help Desk by Split:</p> <p>Average Speed of Answer</p>	Daily average speed to connect to a CSR from the time the call is connected to the ACD > 180 seconds (this includes front messaging)	1% of monthly contract value
PBMS-SLA-012	Call Abandonment Rate	Daily average abandonment rate > 5%	1% monthly contract value

<p>PBMS-SLA-013</p>	<p><b>DDI Key Positions:</b></p> <ul style="list-style-type: none"> <li>➤ Executive Account Director</li> <li>➤ Business Configuration Manager</li> <li>➤ Implementation Project Manager</li> <li>➤ QA Manager</li> <li>➤ Conversion Manager</li> <li>➤ Testing Manager</li> <li>➤ PMO Director</li> <li>➤ Certification Manager</li> </ul> <p><b>Operations Key Positions:</b></p> <ul style="list-style-type: none"> <li>➤ Executive Account Director</li> <li>➤ Clinical Account Manager</li> <li>➤ Operations/System Manager</li> <li>➤ Business Analyst – Change Management</li> <li>➤ VA Licensed Call Center Pharmacist</li> <li>➤ Medicaid Drug Rebate Program Pharmacist</li> <li>➤ Supplemental Drug Rebate Program Director</li> <li>➤ PMO Director</li> </ul>	<ul style="list-style-type: none"> <li>➤ &gt; 15 calendar days from vacancy for interim fill</li> </ul> <hr/> <ul style="list-style-type: none"> <li>➤ &gt; 60 calendar days from vacancy for permanent key position</li> </ul>	<ul style="list-style-type: none"> <li>➤ 1% of monthly contract value</li> </ul> <hr/> <ul style="list-style-type: none"> <li>➤ 1% of monthly contract value</li> </ul>
<p>PBMS-SLA-014</p>	<p>Adhere to applicable State and Federal laws, rules, regulations, guidelines, policies, and procedures relating to information systems, information systems security and privacy, physical security, PHI confidentiality and privacy.</p>	<p>The Contractor will assume all liabilities including any incurred cost to the State for the violation of applicable State and Federal laws, rules, regulations, guidelines, policies, and procedures relating to information systems, information systems security and privacy, physical security, PHI confidentiality and privacy.</p>	<p>Incurred costs</p>

PBMS-SLA-015	Process claims in a timely manner	<ul style="list-style-type: none"> <li>➤ Average Monthly Point of Sale claim processing time &gt; 2 seconds (measured as time between Contractor receipt of transaction from Switch/VAN to Contractor response posted to Switch/VAN)</li> <li>➤ Individual Point of Sale claim transaction processing time &gt; 4 seconds</li> <li>➤ Clean Paper claims processed from receipt through adjudication in less than 24 hours</li> <li>➤ Encounter claims processed/loaded from file receipt to PBMS applications in less than 48 hours</li> </ul>	<ul style="list-style-type: none"> <li>➤ 2% of annual contract value</li> <li>➤ 1% of monthly contract value/claim</li> <li>➤ 1% of monthly contract value/claim</li> <li>➤ 1% of monthly contract value</li> </ul>
PBMS-SLA-016	Erroneously processed claims	<ul style="list-style-type: none"> <li>➤ Notification to DMAS of error</li> <li>➤ Correction of erroneously processed claims</li> </ul>	<ul style="list-style-type: none"> <li>➤ Notification &gt; 1 business day following discovery of the error</li> <li>➤ Contractor mediated correction of erroneously processed claims &gt; 5 business days from discovery of the error</li> <li>➤ 1% of monthly contract value/incident</li> <li>➤ 1% of monthly contract value/claim not corrected</li> </ul>

PBMS-SLA-017	<p>Medicaid Drug Rebate Program Compliance</p> <ul style="list-style-type: none"> <li>➤ Invoice Manufacturers as directed by law</li> <li>➤ Deliver CMS 64.9R content in defined format and timeline specified in Appendix J</li> </ul>	<ul style="list-style-type: none"> <li>➤ Date/Timestamp of delivery &gt; 1 day past CMS established timeline</li> <li>➤ Content delivered &gt; 10<sup>th</sup> day of the month following invoicing for the quarter</li> </ul>	<ul style="list-style-type: none"> <li>➤ 1% of annual contract value per incident where date/timestamp is &gt; 1 business day past established timeline</li> <li>➤ 1% of annual contract value per day past 10<sup>th</sup> day</li> </ul>
PBMS-SLA -018	Must meet all published VITA security requirements	Once identified > 1 day	2% of monthly contract value
PBMS-SLA-019	Configuration requests must be applied in the DMAS test region with 2 business days	> 2 business days	2% of monthly contract value
PBMS-SLA-020	All COTS packages must be no less than current release -1 version	Upon Release of COTS version	2% of annual contract value
PBMS-SLA-021	<p>The Contractor will prioritize all issues into severity levels as defined by DMAS and resolve them according to the established timeframes for the production system defects</p> <p>Severity Level One (1) Defects: within 60 minutes of notification to or from Contractor</p> <p>Severity Level Two (2) Defects: within 4 hours</p> <p>Severity Level Three (3) Defects: within 8 hours</p> <p>Severity Level Four (4) or higher: within an agreed upon schedule between the Contractor(s) and the Department after the defect was identified</p>	< 100%	1% of the monthly contract value

PBMS-SLA-022	On the occurrence of a disaster, the Contractor will restore essential services irrespective of the time the incident occurred	> 120 clock minutes	2% of the annual contract value
PBMS-SLA-023	A comprehensive technical and operational test of the Disaster Recovery (DR) Plan and Business Continuity Plan	Failure to pass the annual test in a contract year	2% of the annual contract value
PBMS-SLA-024	Loss of an Appeal related to contractor inability to produce documentation	Not retrievable through system	Award amount
PBMS-SLA-025	<p>Appeals – Member:</p> <ul style="list-style-type: none"> <li>➤ Contractor shall meet deadline of 21 days @ 5:00 PM ET from the date of the notification by DMAS to submit the Case Summary.</li> <li>➤ Contractor shall attend State Fair Hearing</li> </ul> <p>(Attendance can be either by telephone or in person, at the discretion of the DMAS Hearing Officer conducting the State Fair Hearing)</p>	Postmark date if mailed. Receipt date if sent by any other method	1% of the monthly contract value
PBMS-SLA-026	The Contractor's solution must be certified by CMS	Solution is not certified by CMS	Reimbursement to the Department for the difference in FFP funds received from CMS for the period of time the system is not certified.

**ATTACHMENT B**

**TABLE OF SERVICE LEVELS, RESPONSE AND RESOLUTION TIMES  
AND ESCALATION PROCEDURES FOR LICENSED SERVICES**

See Comprehensive List of Service Level Agreements in Attachment A



EXHIBIT B  
Contract 10035

## Volume 2 – Cost Proposal

**Submitted To:**

Commonwealth of Virginia  
Department of Medical Assistance Services (DMAS)

**Subject:**

Pharmacy Benefit Management Solution  
RFP Solicitation No. 2016-06

**Submitted By:**

Magellan Medicaid Administration, Inc.  
11013 West Broad Street  
Suite 500  
Glen Allen, VA 23060

**Due Date:**

August 5, 2016 at 10:00 A.M. ET





<b>Time Period for this Stage: July 1, 2016 to June 30, 2017</b>				
	<b>Number of Months (N)</b>	<b>Price per Month (PPM)</b>	<b>Total Price (N*PPM)</b>	<b>Calculated Percent Total Price (Total Price/Total Stage Price *100)</b>
(A.1) Fixed Monthly Payments	12	\$322,078.32	\$3,864,939.84	86.33%
(A.2) Quality Maintenance Payments Price	N/A	N/A	\$313,370.93	7.00%
(A.3) Licenses Price[1]	N/A	N/A	\$164,115.00	3.67%
(A.4) CMS Certification Quality Maintenance Payments Price	N/A	N/A	\$134,301.83	3.00%
<b>(A.5) Total Stage Price (Sum A.1 – A.4)</b>	N/A	N/A	\$4,476,727.60	100%

[1] License information shall also be included as a line item in Schedule L – Licenses.



<b>Time Period for this Stage: July 1, 2017 - June 30, 2018</b>				
	<b>Number of Months (N)</b>	<b>Price per Month (PPM)</b>	<b>Total Price (N*PPM)</b>	<b>Calculated Percent Total Price (Total Price/Total Stage Price *100)</b>
(B.1) Fixed Monthly Payments	12	\$249,091.02	\$2,989,092.24	80.75%
(B.2) Licenses Price[1]	N/A	N/A	\$164,115.00	4.43%
(B.3) Configuration/ Customization Price[2]	N/A	N/A	\$548,600.00	14.82%
<b>(B.4) Total Stage Price (Sum B.1 - B.3)</b>	N/A	N/A	\$3,701,807.24	100%

[1] License information shall also be included as a line item in Pricing Schedule L - Licenses.

[2] Total amount from Schedule K - Configuration and Customization, shall be transferred for this line item.



<b>Time Period for this Stage: July 1, 2018 - June 30, 2019</b>				
	<b>Number of Months (N)</b>	<b>Price per Month (PPM)</b>	<b>Total Price (N*PPM)</b>	<b>Calculated Percent Total Price (Total Price/Total Stage Price *100)</b>
(C.1) Fixed Monthly Payments	12	\$244,695.85	\$2,936,350.20	80.00%
(C.2) Licenses Price[1]	N/A	N/A	\$164,115.00	4.48%
(C.3) Configuration/ Customization Price[2]	N/A	N/A	\$565,058.00	15.42%
<b>(C.4) Total Stage Price (Sum C.1 - C.3)</b>	N/A	N/A	\$3,665,523.20	100%

[1] License information shall also be included as a line item in Pricing Schedule L - Licenses.

[2] Total amount from Schedule K - Configuration and Customization, shall be transferred for this line item.



<b>Time Period for this Stage: July 1, 2019 – June 30, 2020</b>				
	<b>Number of Months (N)</b>	<b>Price per Month (PPM)</b>	<b>Total Price (N*PPM)</b>	<b>Calculated Percent Total Price (Total Price/Total Stage Price *100)</b>
(D.1) Fixed Monthly Payments	12	\$252,197.01	\$3,026,364.12	80.22%
(D.2) Licenses Price[1]	N/A	N/A	\$164,115.00	4.35%
(D.3) Configuration/ Customization Price[2]	N/A	N/A	\$582,009.74	15.43%
<b>(D.4) Total Stage Price (Sum D.1 – D.3)</b>	N/A	N/A	\$3,772,488.86	100%

[1] License information shall also be included as a line item in Pricing Schedule L – Licenses.

[2] Total amount from Schedule K - Configuration and Customization, shall be transferred for this line item.



<b>Time Period for this Stage: July 1, 2020 - June 30, 2021</b>				
	<b>Number of Months (N)</b>	<b>Price per Month (PPM)</b>	<b>Total Price (N*PPM)</b>	<b>Calculated Percent Total Price (Total Price/Total Stage Price *100)</b>
(E.1) Fixed Monthly Payments	12	\$259,923.21	\$3,119,078.52	80.33%
(E.2) Licenses Price[1]	N/A	N/A	\$164,115.00	4.23%
(E.3) Configuration/ Customization Price[2]	N/A	N/A	\$599,470.03	15.44%
<b>(E.4) Total Stage Price (Sum E.1 - E.3)</b>	N/A	N/A	\$3,882,663.55	100%

[1] License information shall also be included as a line item in Pricing Schedule L - Licenses.

[2] Total amount from Schedule K - Configuration and Customization, shall be transferred for this line item.



<b>Time Period for this Stage: July 1, 2021 - June 30, 2022</b>				
	<b>Number of Months (N)</b>	<b>Price per Month (PPM)</b>	<b>Total Price (N*PPM)</b>	<b>Calculated Percent Total Price (Total Price/Total Stage Price *100)</b>
(F.1) Fixed Monthly Payments	12	\$267,881.19	\$3,214,574.28	80.44%
(F.2) Licenses Price[1]	N/A	N/A	\$164,115.00	4.11%
(F.3) Configuration/ Customization Price[2]	N/A	N/A	\$617,454.13	15.45%
<b>(F.4) Total Stage Price (Sum F.1 - F.3)</b>	N/A	N/A	\$3,996,143.41	100%

[1] License information shall also be included as a line item in Pricing Schedule L - Licenses.

[2] Total amount from Schedule K - Configuration and Customization, shall be transferred for this line item.



<b>Time Period for this Stage: July 1, 2022 - June 30, 2023</b>				
	<b>Number of Months (N)</b>	<b>Price per Month (PPM)</b>	<b>Total Price (N*PPM)</b>	<b>Calculated Percent Total Price (Total Price/Total Stage Price *100)</b>
(G.1) Fixed Monthly Payments	12	\$276,077.91	\$3,312,934.92	80.55%
(G.2) Licenses Price[1]	N/A	N/A	\$164,115.00	3.99%
(G.3) Configuration/ Customization Price[2]	N/A	N/A	\$635,977.76	15.46%
<b>(G.4) Total Stage Price (Sum G.1 - G.3)</b>	N/A	N/A	\$4,113,027.68	100%

[1] License information shall also be included as a line item in Pricing Schedule L - Licenses.

[2] Total amount from Schedule K - Configuration and Customization, shall be transferred for this line item.



<b>Time Period for this Stage: July 1, 2023 - June 30, 2024</b>				
	<b>Number of Months (N)</b>	<b>Price per Month (PPM)</b>	<b>Total Price (N*PPM)</b>	<b>Calculated Percent Total Price (Total Price/Total Stage Price *100)</b>
(H.1) Fixed Monthly Payments	12	\$284,520.54	\$3,414,246.48	80.65%
(H.2) Licenses Price[1]	N/A	N/A	\$164,115.00	3.88%
(H.3) Configuration/ Customization Price[2]	N/A	N/A	\$655,057.09	15.47%
<b>(H.4) Total Stage Price (Sum H.1 - H.3)</b>	N/A	N/A	\$4,233,418.57	100%

[1] License information shall also be included as a line item in Pricing Schedule L - Licenses.

[2] Total amount from Schedule K - Configuration and Customization, shall be transferred for this line item.





<b>Time Period for this Stage: July 1, 2024 - June 30, 2025</b>				
	<b>Number of Months (N)</b>	<b>Price per Month (PPM)</b>	<b>Total Price (N*PPM)</b>	<b>Calculated Percent Total Price (Total Price/Total Stage Price *100)</b>
(I.1) Fixed Monthly Payments	12	\$293,216.44	\$3,518,597.28	80.75%
(I.2) Licenses Price[1]	N/A	N/A	\$164,115.00	3.77%
(I.3) Configuration/ Customization Price[2]	N/A	N/A	\$674,708.80	15.48%
<b>(I.4) Total Stage Price (Sum I.1 - I.3)</b>	N/A	N/A	\$4,357,421.08	100%

[1] License information shall also be included as a line item in Pricing Schedule L - Licenses.

[2] Total amount from Schedule K - Configuration and Customization, shall be transferred for this line item.



Optional Enhancements[1]		Price
Specialty Drug Management - Mandatory Pricing	(J.1)	Implementation \$10,000. \$350,000 Anually
Identification of Other Health Insurance - Mandatory Pricing	(J.2)	Implementation \$0.00. \$360,000 Anually
E-Prescribing Support - Mandatory Pricing	(J.3)	Implementation \$200,000. \$240,000 Anually
Pharmacy Provider Enrollment Services - Mandatory Pricing	(J.4)	Implementation \$180,000. \$250,000 Anually
Integration of Laboratory Values or other Member Data - Optional Pricing	(J.5)	Implementation \$250,000. \$50,000 Anually
Meeting Space - Optional Pricing	(J.6)	Included in base fee
Additional Offeror Specific Optional Item	(J.7)	\$0.00
Additional Offeror Specific Optional Item	(J.8)	\$0.00
Additional Offeror Specific Optional Item	(J.9)	\$0.00
Additional Offeror Specific Optional Item	(J.10)	\$0.00
Total Price for Optional Enhancements[2]	(J.11)	\$1,250,000.00
<b>(Sum J.1 - J.10)</b>		

[1] NOTE: Optional enhancements and costs are for informational purposes and will not be included in the scoring of the pricing proposals or the scoring of SWaM Plans but may be discussed and included during contract negotiations.

[2] The Offeror may add additional rows as necessary to capture pricing for additional proposed options to the solutions.



# Staff Assigned	Primary Job Assignment	Total Hours	Hourly Rate[1]	Total Price	
1.0 FTE	Configuration Staff	2,080	\$75.00	(K.1)	\$156,000.00
1.0 FTE	Customization Staff	2,080	\$110.00	(K.2)	\$228,800.00
2.0 FTE	<b>TOTAL Configuration and Customization Staff</b> <i>(sum of K.1 and K.2)</i>	<b>4,160</b>		<b>(K.3)</b>	<b>\$384,800.00</b>
<b>Staff to Support 4,160 hours Configuration and Customization per year</b>					
	Testing and Validation Staff	650	\$75.00	(K.4)	\$48,750.00
	Business Analyst Staff	650	\$75.00	(K.5)	\$48,750.00
	Technical Writing and System Documentation Staff	390	\$75.00	(K.6)	\$29,250.00
	Project Management Staff	390	\$95.00	(K.7)	\$37,050.00
	<b>TOTAL for Configuration and Customization Support Staff</b> <i>(sum of K.4, K.5, K.6, and K.7)</i>	<b>2080</b>		<b>(K.8)</b>	<b>\$163,800.00</b>
	<b>TOTAL for providing 4160 hours of Configuration and Customization</b> <i>(sum of K.3 and K.8)</i>			<b>(K.9)[2]</b>	<b>\$548,600.00</b>
<b>Cost of Living Assessment (COLA) Factor (Per SFY) if the Department requires the purchase of additional Enhancement hours.</b>				<b>3%</b>	

[1] Hourly Rates shall be effective from DDI Contract Stage 1, SFY 2016-17, through contract based period, O&M Contract Stage SFY2024-25.

[2] Transfer total amount to items B.3, C.3, D.3, E.3, F.3, G.3, H.3, and I.3 on Schedules B through I.



<b>License Description</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Total Price</b>
<b>(Terms and Options)</b>			
Cognos Power Users	25	\$ 2,225	\$ 55,625
Cognos Consumer Users	25	\$ 230	\$ 5,750
SABA	20	\$ 12	\$ 240
First Data Bank	1	\$ 90,000	\$ 90,000
Citrix User License	25	\$ 500	\$ 12,500
<b>Total Licensing Price</b>		\$92,967.00	
<b>(sum of L.1, L.2 L.3, L.4, L.5, and L.6)</b>			\$ 164,115

[1] Transfer total amount to appropriate line item on Schedule A through Schedule I.



Labor Category[1]	Hourly Rate
Account Management	\$ 110.00
Clinical	\$ 120.00
Plan Administration	\$ 75.00
Call Center Pharmacy Technicians	\$ 50.00
Project Management	\$ 95.00
IT	\$ 110.00
Quality Assurance	\$ 75.00
Rebate Analyst (associated with expanding rebate program)	\$ 65.00
Rebate Data Entry (associated with expanding rebate program)	\$ 30.00
	\$
	\$

[1] Offeror shall complete this table and expand as necessary to capture all labor categories to be used by them in the performance of their proposed solution.



Pricing Stage	Price Line #	Price
Total Implementation Contract Stage 1 SFY 2016-17 (Total Stage Price from Schedule A.5)	(A.5)	\$4,476,727.60
Total Ongoing Operations and Maintenance, Contract Stage SFY 2017-18 (Total Stage Price from Schedule B)	(B.4)	\$3,701,807.24
Total Ongoing Operations and Maintenance, Contract Stage SFY 2018-19 (Total Stage Price from Schedule C)	(C.4)	\$3,665,523.20
Total Ongoing Operations and Maintenance, Contract Stage SFY 2019-20 (Total Stage Price from Schedule D)	(D.4)	\$3,772,488.86
Total Ongoing Operations and Maintenance, Contract Stage SFY 2020-21 (Total Stage Price from Schedule E)	(E.4)	\$3,882,663.55
Total Ongoing Operations and Maintenance, Contract Stage SFY 2021-22 (Total Stage Price from Schedule F)	(F.4)	\$3,996,143.41
Total Ongoing Operations and Maintenance, Contract Stage SFY 2022-23 (Option Year Renewal) (Total Stage Price from Schedule G)	(G.4)	\$4,113,027.68
Total Ongoing Operations and Maintenance, Contract Stage SFY 2023-24 (Option Year Renewal) (Total Stage Price from Schedule H)	(H.4)	\$4,233,418.57
Total Ongoing Operations and Maintenance, Contract Stage SFY 2024-25 (Option Year Renewal) (Total Stage Price from Schedule I)	(I.4)	\$4,357,421.08
Operations and Maintenance Subtotal (Sum B.4, C.4 D.4, E.4, F.4, G.4, H.4 and I.4)	(O&M)	\$31,722,493.59
Total Price Bid[1] (sum of A.5 and O&M)	(Total)	\$36,199,221.19

[1] The total price bid will also be used for SWaM scoring purposes.



# APPENDIX B – SWAM PROCUREMENT AND SUBCONTRACTING MONTHLY REPORT AND SMALL BUSINESS PROCUREMENT PLAN

## A. SMALL, WOMEN-OWNED, AND MINORITY-OWNED BUSINESS (SWAM) PROCUREMENT AND SUBCONTRACTING QUARTERLY REPORT

On a quarterly basis, Contractor shall submit to DMAS evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the small business subcontracting plan. Upon completion of the contract, the Contractor agrees to furnish the purchasing office at a minimum the following information: name of firm with the SBSB certification number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product or service provided. Payment(s) may be withheld until compliance with the plan is received and confirmed by the agency or institution. The agency or institution reserves the right to pursue other appropriate remedies for non-compliance to include, but not be limited to, termination for default.

Contractor’s quarterly report shall include spend on all Contractor’s contracts with second-tier small business suppliers which provide products or Service/Solution under this Contract. The report shall specify the amount of such spend provided to SWaM vendors, by SWaM category, regardless of such SWaM vendors’ certification status. Contractor shall submit the report to [BCM@dmass.virginia.gov](mailto:BCM@dmass.virginia.gov).

## B. SWAM PROCUREMENT PLAN

All small businesses must be certified by the Virginia Department of Small Business and Supplier Diversity (SBSD) by the due date for receipt of bids Certification applications are available through SBSB online at <http://www.sbsd.virginia.gov/>.

Offeror Name: Magellan Medicaid Administration, Inc.

Preparer Name: Robert Horton

Date: July 12, 2016

## INSTRUCTIONS

- A. If you are certified by the SBSB as a small business or as a micro business, complete only Section A of this form. This shall not exclude SBSB-certified women, minority or service-disabled veterans-owned businesses when they have received SBSB small business certification.
- B. If you are not a SBSB-certified small business, complete Section B of this form.



**SECTION A**

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If your firm is certified by the SBSD are you certified as a (check all that apply):

- Small Business
- Small and Women-owned Business
- Small and Minority-owned Business
- Small Service Disabled Veteran-owned Business
- Small Service Disabled Veteran-owned Business
- Micro Business
- Micro Business and Women-owned Business
- Micro Business and Minority-owned Business
- Micro Service Disabled Veteran-owned Business

Certification Number: \_\_\_\_\_

Certification Date: \_\_\_\_\_





Virginia Medicaid Enterprise System: Pharmacy Benefit Management  
Solution RFP

**SECTION B**

Populate the table below to show your firm's plans for utilization of SBSB-certified small businesses in the performance of this contract. This shall not exclude SBSB-certified micro businesses or women, minority, or service disabled veteran-owned businesses when they have received the SBSB small business certification. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, etc.

Small Business Name & Address DMBE Certificate #	Status if Small Business is also: Women (W), Minority (M) Service-Disabled Veteran (D), Micro Business (MB)	Contact Person, Telephone & Email	Type of Goods and/or Services	Planned Involvement During Initial Period of the Contract	Planned Contract Dollars During Initial Period of the Contract
Astrya Corporation, 411 East Franklin St., Suite 105, Richmond, VA 23219 Cert# 7160	Minority -Small (MS)	Mark Thompson, 804-433-1104 mthompson@astyra.com	Staff Augmentation	Assist Magellan in identifying, recruiting, staffing, and management of specific Call Center Staffing	Over base period (DDI + 5 Years Ops)
<b>Totals \$</b>					\$1,842,677

**Negotiations Summary: RFP 2016-06 - Pharmacy Benefit Management Solution (PBMS)**  
**November 7, 2016**

This document serves as a summary of negotiations conducted in person between the Department of Medical Assistance Services (DMAS) and Magellan Medicaid Administration, Inc. (Magellan). Additionally, this document supplements and modifies the original proposal the Department received from Magellan as stated below.

The Department elects to exercise all of the following Optional Services, based on the terms outlined below.

TOPIC	Comments
<p><b>P&amp;T Committee Presentations:</b> DMAS has closely reviewed the Offeror response to the RFP requirement of attendance and support of the P&amp;T Committee. In the Offeror response, several key staff members were designated as contributors to the effort in addition to other support staff (“all of whom will actively participate in all P&amp;T meetings, including the presentation of clinical information, financial analyses and PDL recommendations. Other MMA support staff will participate in P&amp;T meetings as requested by DMAS.”). DMAS has identified an opportunity for the Offeror to strengthen the existing level of service provided to the P&amp;T Committee. There exists a need for a drug expert resource/clinician to provide detailed presentations beyond the current talking points provided for the P&amp;T meetings. Given the significant amount of clinical resources available to the Offeror, DMAS expects that the inclusion of other support staff participation in meetings shall include not only drug information clinicians but also the Offeror’s physician resources as needed.</p> <p>Please confirm your commitment to the response quoted above and the level of support staff that will assist in the presentation of clinical, financial, and PDL data.</p>	<p>MMA confirms that our support of the DMAS P&amp;T Committee will include (in the base contract) other support staff such as:</p> <ol style="list-style-type: none"> <li>1. Meeting facilitation and clinical presentations by MMA Clinical Team</li> <li>2. PDL rebate team (financial analysis, rebate lead)</li> <li>3. Key Opinion Leaders (specialists)</li> <li>4. Magellan physicians</li> </ol>
<p><b>Enhanced Rebate Program coverage/lines:</b> DMAS referenced other drug rebate programs and seeks clarification on the Contractor’s position regarding recommendations and additions to the existing products or line extensions of existing Rebate Programs. The Contractor should include items not traditionally a part of State Medicaid Agency Rebate Programs.</p> <p>DMAS requests that the Offeror confirm that it is their intention to provide modeling and recommendations on the inclusion of these lines as a component of the Contractor’s proposed DMAS Rebate Solution.</p>	<p>MMA confirms that we will provide modeling and recommendations of non-traditional items such as Long Acting Reversible Contraception (LARC), physician administered drugs or additional DME products as part of our proposed rebate solution and included in the base contract.</p>
<p><b>Specialty Drug Program:</b> DMAS acknowledges the growing spend in the Specialty Drug arena as well as the proliferation of new therapies in the Specialty Drug pipeline. It</p>	<p>MMA’s proposes two approaches to managing specialty pharmacy based on our work with other Medicaid and FFS clients. This is in addition to the work we</p>

**Negotiations Summary: RFP 2016-06 - Pharmacy Benefit Management Solution (PBMS)**  
**November 7, 2016**

TOPIC	Comments
<p>is DMAS' desire to ensure that any Specialty Drug Program returns a significant multiple of the investment on the part of DMAS. DMAS is seeking a high return solution that is not punitive or overly restrictive to member or provider/prescriber when deploying a Specialty Drug Management Program.</p> <p>DMAS requests that the Offeror provide additional detail regarding past experiences with these efforts and demonstrate an equitable solution cost with significant return on investment that DMAS may integrate into their PBMS Solution.</p>	<p>already do with Prior Authorizing these drugs (dispensed through the pharmacy network) and Supplemental Rebates.</p> <p>1) Specialty Pharmacy Network Management</p> <ul style="list-style-type: none"> <li>A. Work with the MMA clinical/account team to recommend a Specialty Pharmacy <u>Drug List</u>;</li> <li>B. Recommend Specialty Pharmacy Network pricing, including projected savings (either at NDC or GSN level);</li> <li>C. If requested, MMA will work with DMAS to review with Virginia Pharmacists Association);</li> <li>D. Work with DMAS to submit a SPA to CMS to support Specialty Pharmacy Network pricing (ensuring compliance with CMS reimbursement requirements, e.g. aggregate limits);</li> <li>E. Recommend Specialty Pharmacy Network Quality Assurance criteria for participation including entrance and maintenance criteria (e.g. 24-hour nurse line, specific outcome metrics);</li> <li>F. Conduct network enrollment;</li> <li>G. Configure in FirstRx.</li> </ul> <p>Implementation fee of \$50,000 for network consultant.</p> <p>All clinical components, reporting, and account management will be included in the base contract.</p> <p>Should DMAS request MMA assistance in compliance and oversight of the Specialty Pharmacy Network; Annual fee is \$100,000</p> <p>2) MMA also proposes our proven Medical Pharmacy Program that manages Physician Administered Drugs.  The program consists of:  -A quarterly Fee Schedule for physician administered drugs</p>

**Negotiations Summary: RFP 2016-06 - Pharmacy Benefit Management Solution (PBMS)**  
**November 7, 2016**

TOPIC	Comments
	<p align="center">-Prior Authorization for certain physician administered drugs                      (Appendix A: List of Drugs for Prior Authorization) including PA criteria development</p> <p>Implementation fee of \$10,000</p> <p>Operations fee of \$0.25 PMPM (*50,000 lives assumption)                      Prior to agreement on MMA's Medical Pharmacy Program, MMA will conduct savings analysis to ensure a return satisfactory to DMAS.</p>
<p><b>E- Prescribing:</b> DMAS has interest in the proposed ePA offering noted in the RFP response. An item of concern is detail regarding the market share of the two products/offering noted in the RFP response in the DMAS provider region. Additionally, DMAS is concerned that lives outside of the FFS should not be part of this offering and seeks detail regarding the Offeror's ability to exclude members present in the DMAS enrollment files sent to the Offeror to support Encounter Claim processing but not eligible for FFS benefits or the ePA product. Finally, support for those providers who do not use either of the applications that are integrated with ePA is an issue and DMAS would respectfully request that given the low number of lives in the FFS enrollment and early assignment to managed care, that ePrescribing services are included in the base Contract.</p>	<p>MMA agrees to include ePrescribing services (inclusive of ePA and ePrescribing support services) in the base contract (up to 50,000 members).</p> <p>Additional ePrescribing eligibility transactions over 50,000 lives @ \$0.16/each (no additional charge for ePA).</p>
<p><b>Identification of Other Health Insurance (OHI):</b> DMAS appreciates the Offeror's ability to provide an external solution to identify potential other health insurance coverage for enrolled members. The DMAS model of Managed Care Organizations providing coverage and services to the majority of enrolled members leaves few members covered under the FFS benefit.</p> <p>DMAS would request that the Offeror develop a model to provide this service under the base contract offering that reflects the ephemeral nature of member coverage under the DMAS FFS benefit.</p>	<p>MMA agrees to provide our Enhanced TPL (eTPL) solution for the identification of OHI in the base contract for up to 50,000 members.</p> <p>The MMA eTPL model will include an initial Identification Screening prior to go-live plus two Identification Screenings/year thereafter. MMA will place no restrictions on the OHI and information will be passed to other relevant MES modules.</p> <p>Additional Identification Screenings: \$15,000/each (up to 50,000 members)                      Medical OHI Fee: \$50.00/each</p>

**Negotiations Summary: RFP 2016-06 - Pharmacy Benefit Management Solution (PBMS)**  
**November 7, 2016**

TOPIC	Comments						
<p><b>Integration of Laboratory Values:</b> DMAS seeks to provide a cutting edge program benefit to members that augments and enhances patient outcomes. To that end, the inclusion of laboratory data is an item that would place DMAS and the Offeror on a higher tier with regard to program offerings to enrolled members and providers. Due to the effort required on the part of both entities related to the acquisition, deployment, refinements, and enhancements of a program of this nature will set the DMAS PBMS Solution apart from others in the sector and will position each party at the leading edge regarding the architecture of integrating clinical data documentation.</p> <p>DMAS seeks to advance healthcare in concert with the offeror and would request that, since this is an emerging area in the pharmacy benefit as a part of overall healthcare, the Offeror provide an integrated lab value solution in their base offering.</p>	<p>Should DMAS expand Medicaid and membership increases MMA will include new lives up to 100,000 at \$10,000/month</p> <p>MMA agrees that this is an innovative program and will advance both the DMAS program and the MMA program.            Implementation: \$200,000            Program includes two lab vendors of DMAS selection. Magellan seeks to cover a significant portion of the DMAS membership. As such, assuming the use of standard layouts, MMA include more vendors as mutually agreeable.</p> <table border="1" data-bbox="1354 581 2341 1393"> <thead> <tr> <th data-bbox="1354 581 1811 646">Releases</th> <th data-bbox="1811 581 2341 646">Resource Type</th> </tr> </thead> <tbody> <tr> <td data-bbox="1354 646 1811 1003">           Phase 1 (Tech build)           <ul style="list-style-type: none"> <li>• Requirements/Analysis</li> <li>• HL7 Mapping</li> <li>• HL7 Interface engine build out</li> <li>• Infrastructure/Connectivity</li> <li>• Security/Audit build out</li> <li>• Workflow build out</li> <li>• POS interface/build out</li> <li>• Process build out (Operational)</li> <li>• Reporting</li> </ul> </td> <td data-bbox="1811 646 2341 1003">           Project Management            Business Analyst(s)            Enterprise Architect            HL7 Interface Engine Development            Java Development            FirstRx Configuration            Process Engineer         </td> </tr> <tr> <td data-bbox="1354 1003 1811 1360">           Phase 2 (Testing/Validation/Deployment)           <ul style="list-style-type: none"> <li>• Infrastructure connectivity testing</li> <li>• HL7 Interface testing</li> <li>• HL7 data validation</li> <li>• POS data validation</li> <li>• Workflow/Process validation</li> <li>• UAT</li> <li>• End to End testing</li> <li>• Deployment</li> </ul> </td> <td data-bbox="1811 1003 2341 1360">           Project Management            FirstRx Configuration            HL7 Interface engine Development            Java Development            Business Analyst(s)            Process Engineer            QA Tester         </td> </tr> </tbody> </table> <p>Additional lab vendors: \$20,000/each</p>	Releases	Resource Type	Phase 1 (Tech build) <ul style="list-style-type: none"> <li>• Requirements/Analysis</li> <li>• HL7 Mapping</li> <li>• HL7 Interface engine build out</li> <li>• Infrastructure/Connectivity</li> <li>• Security/Audit build out</li> <li>• Workflow build out</li> <li>• POS interface/build out</li> <li>• Process build out (Operational)</li> <li>• Reporting</li> </ul>	Project Management Business Analyst(s) Enterprise Architect HL7 Interface Engine Development Java Development FirstRx Configuration Process Engineer	Phase 2 (Testing/Validation/Deployment) <ul style="list-style-type: none"> <li>• Infrastructure connectivity testing</li> <li>• HL7 Interface testing</li> <li>• HL7 data validation</li> <li>• POS data validation</li> <li>• Workflow/Process validation</li> <li>• UAT</li> <li>• End to End testing</li> <li>• Deployment</li> </ul>	Project Management FirstRx Configuration HL7 Interface engine Development Java Development Business Analyst(s) Process Engineer QA Tester
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**Negotiations Summary: RFP 2016-06 - Pharmacy Benefit Management Solution (PBMS)**  
**November 7, 2016**

TOPIC	Comments
<p><b>Data Delivery and Data Quality:</b> DMAS has attached a document entitled “Data Delivery and Data Quality” which outlines DMAS’ expectations regarding the exchange of data. DMAS would like to confirm Magellan’s understanding of DMAS’ expectations, as defined in the RFP and outlined in this document, during the performance of the contract.</p>	<p>MMA has provided redlines and comments. While not a part of the Contract directly, MMA agrees to work with the Department to refine expectations during DDI and/or once unknown variables (such as vendors for other modules of the MES) become known.</p> <p>MMA will fund the cost of any development (free of FFP dollars) that may be necessary and in this manner, be able to make the capability available to other Customers in addition to DMAS. DMAS shall pay for implementation only.</p>

**Appendix A**  
**List of Drug for Prior Authorization**

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J0881	ARANESP
J0885	PROCRIT/EPOGEN
J1442	NEUPOGEN
J1745	REMICADE
J2323	TYSABRI
J2469	ALOXI
J2505	NEULASTA
J9035	AVASTIN
J9228	YERVOY
J9263	ELOXATIN
J9264	ABRAXANE
J9303	VECTIBIX
J9305	ALIMTA
J9306	PERJETA
J9310	RITUXAN
J9355	HERCEPTIN

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