



COMMONWEALTH of VIRGINIA
Department of Medical Assistance Services

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December 4, 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 B Jones*
Director, Virginia Department of Medical Assistance Services

SUBJECT: Report on the Replacement of the Medicaid Management Information System – Contract Awarded to Optum Government Solutions, Inc.

The 2017 Appropriation Act, Chapter 836, 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 October 11, 2017, the Department of Medical Assistance Services awarded the Medicaid Enterprise System Enterprise Data Warehouse Solution Contract to Optum Government Solutions, Inc. 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



Enterprise Data Warehouse Solution Contract

between

The Department of Medical Assistance Services

and

Optum Government Solutions, Inc.

**ENTERPRISE DATA WAREHOUSE SOLUTION CONTRACT
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INFORMATION TECHNOLOGY SOLUTION CONTRACT

THIS Enterprise Data Warehouse 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 Optum Government Solutions, Inc. ("Supplier"), a Delaware corporation headquartered at 11000 Optum Circle, Eden Prairie, Minnesota, 55344 to be effective as of October 11, 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 an Enterprise Data Warehouse Solution (EDWS) as described in Exhibit A, Requirements. If Supplier proposes a Supplier hosted solution, then Exhibit G – Cloud Services - Additional Terms and Conditions shall apply and be incorporated into the governing contract.

2. DEFINITIONS

A. Acceptance

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

B. Agent

Any third party independent agent of DMAS.

B.1 Application

The software programs in object code and other related data, including intellectual data, proprietary information and Documentation contained and applicable to DMAS Licensed Applications and 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. 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.

G.1 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.

G.2 DMAS Licensed Software

Any Software itemized in Schedule L of Supplier's Price Proposal that is part of Exhibit B attached hereto for which access and usage rights by DMAS are provided under Exhibit G attached hereto.

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

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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. The actual Maintenance Level for a unit of Software or Product shall be set forth in Contract and/or subsequent change orders.

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

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

P.1. Other Software

All Software described in Supplier's Technical Proposal that is part of Exhibit A attached hereto that are used solely by Supplier, and in all events are exclusive of any DMAS Licensed Software.

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

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

Y. Supplier

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

Z. Update

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

AA. Virginia Information Technologies Agency (VITA)

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

BB. Work Product

Inventions, combinations, machines, methods, formulae, techniques, processes, improvements, software designs, computer programs, strategies, specific computer-related know-how, data and original works of authorship (collectively, the "Work Product") discovered, created, or developed by Supplier, or jointly by Supplier and DMAS in the performance of this Contract. Work Product shall also include configuration and design specifications & documentation to the extent such is created under this Contract. All Services performed hereunder shall include delivery of all (re)useable source and object code and all executables and documentation for all Work Product.

BB.1. NOTE: COTS products and Software as a Service (SaaS) solutions are designed, developed and licensed by the vendor, and the Commonwealth is not entitled to ownership rights to the core program. When CMS enhanced matched is used for COTS configuration or customization, those elements become subject to existing regulation at 45 CFR §495.360 regarding state and federal ownership and royalty-free licensing. The requirement for a royalty-free, non-exclusive and irrevocable license to software referenced in that regulation applies only to software related to the customization and configuration of a COTS product for Commonwealth

use (Work Product as described above) and does not apply to the core product. The Commonwealth, and other states, could freely share and re(use) the resulting COTS software configuration and customization (Work Product), subject to the licensing of the core COTS software products.

3. TERM AND TERMINATION

A. Contract Term

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, shall continue to be effective and legally binding with the Contract Term defined by a Design, Development and Implementation Phase (s) from the October 11, 2017 through June 30, 2020 and an Operations and Maintenance Phase that begins on October 11, 2019 (for Phase 1 functionality described within the Requirements for the Solution attached as Exhibit A and where the Operations and Maintenance Phase for Phases 2 and 3 shall begin consistent with the DDI schedule set forth in Exhibit A) and ends October 10, 2024. DMAS, in its sole discretion, may extend this Contract with up to three (3) one-year option periods that would run from October 11, 2024 through October 10, 2027. DMAS will issue a modification to this Contract stating the extension period, not less than thirty (30) days prior to the expiration of any current term.

B. Termination for Convenience

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

C. Termination for Breach or Default

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

If DMAS deems the Supplier to be in breach and/or default, as defined above, DMAS shall provide Supplier with written 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 and severity of the matter and generally shall not be less than sixty (60) 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 Supplier's 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. The effect of termination of the Contract will be to discharge both the Supplier and DMAS from future performance of the Contract, but not from the rights and obligations of each Party that existed at the time of termination.

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, pursuant to the *Code of Virginia* § 2.2-4309. 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 any other significant Supplier stakeholders who have a part in the successful performance of this Contract 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 and appropriate 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. DMAS will provide Supplier with written notice documenting the incident, and provide an opportunity for Supplier to discuss the incident & appropriate next steps with DMAS.

B. Supplier Personnel Supervision

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

C. Key Personnel

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

D. Subcontractors

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

If Supplier subcontracts the provision of any performance obligation under this Contract to any other party, Supplier will (i) act as prime contractor and shall be the sole point of contact with regard to all obligations under this Contract, and (ii) hereby represents and warrants that any authorized subcontractors shall perform in accordance with the warranties and applicable laws 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 reasonably fall 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 that reasonably fall 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. The effect of either scenario would be set forth in a mutually agreed upon Change Order.

6. SOFTWARE LICENSE RIGHTS AND DATA LICENSE RIGHTS

A. Software License Rights

DMAS is a state agency of the Commonwealth of Virginia, and therefore if applicable, any license purchased or assigned to DMAS, shall be held by the Commonwealth. The Software described in this Contract shall be one of the following license types:

"Term License": During the Term of this Contract, Supplier hereby grants to the Commonwealth a non-exclusive, non-transferable, license to access and use the DMAS Licensed Software, either via the Internet (for DMAS Licensed Software hosted by the Supplier) on servers owned, operated, housed, and maintained by Supplier or on applicable desktop computers owned by the Commonwealth (for other DMAS Licensed Software), subject to the license terms and restrictions set forth in Exhibit G, Cloud Services – Additional Terms and Conditions attached to this Contract and incorporated by reference herein, and the further license types that have been priced in Schedule L of Supplier's Price Proposal in Exhibit B.

"No License to DMAS": During the Term of this Contract, the Other Software shall be used solely by Supplier to provide DMAS with the Services described in this Contract and no license rights are granted to the Commonwealth.

The parties agree that as of the Effective Date, while the Solution includes Software licensed by a Software Publisher, none of such Software shall be licensed directly from the Software Publisher through an End User Licensing Agreement (EULA) and therefore, none of the provisions of the License Agreement Addendum (LAA) attached hereto as Exhibit D shall apply. Notwithstanding the foregoing, if and to the extent the parties enter into an Amendment to this Contract and agree, as part of that Amendment, that certain Software from a Software Publisher must be licensed to DMAS, Supplier shall have sole responsibility for ensuring that any such Software Publisher executes the LAA, subject to any changes to the LAA that may be mutually agreed upon as part of such Amendment. The Software Publisher's EULA, along with the LAA executed by Software Publisher shall be added to Exhibit D for reference, but shall not become a part of this Contract.

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. Data License Rights

For the Provider Data Solutions Data Extracts described in Supplier's Technical Proposal as Provider 360 Data Extracts (the "Provider 360 Data"), Supplier hereby licenses to the Commonwealth such Provider 360 Data subject to the following terms, uses and limitations:

1. Permitted Uses. DMAS may use the Provider 360 Data for its internal, lawful purposes, and may make it available to End Users, as provided in this Section. DMAS may allow any

individual person who is authorized by DMAS to access, use or submit queries to DMAS' website and who has agreed to a usage agreement consistent with these terms (the "Provider 360 Data End Users") to access and/or view the Provider 360 Data that an End User receives in response to a query searching for providers that is entered on DMAS' public website (an "End User Query").

2. End User Views. DMAS agrees that it shall prevent each End User from viewing, accessing or downloading more than one hundred thousand (100,000) providers in response to a single End User Query.
3. Limitations. The Provider 360 Data is provided to DMAS for informational purposes only. Any reliance upon, interpretation of and/or use of the Provider 360 Data by DMAS or End User is solely and exclusively at the discretion of DMAS or the End User. Supplier is not responsible for the actions taken or not taken and decisions made after reviewing the Provider 360 Data through DMAS' website. DMAS shall not represent the Provider 360 Data any way other than as expressed in this Section.
4. Third Party Processors. DMAS may allow its third party processors access to the Provider 360 Data for the sole purpose of processing the Provider 360 Data on behalf of DMAS, with Supplier's prior, written consent. DMAS agrees and shall ensure that prior to such access, all such third party processors shall sign an appropriate nondisclosure agreement with DMAS or with Supplier.
5. Distribution and Resale. DMAS may not provide the Provider 360 Data to any third parties other than End Users, or as otherwise authorized by Optum. DMAS shall allow an End User to access and use Provider 360 Data only for the internal use of such End User, for personal healthcare management purposes only, and not for resale or redistribution. DMAS shall allow access to the Provider 360 Data only to individual consumers. DMAS shall not sell, distribute or transfer Provider 360 Data or a provider search functionality or program containing this Provider 360 Data to any other entities, including but not limited to, health insurers, third party health plan administrators, pharmacy benefit managers, retail pharmacies, pharmaceutical manufacturers, medical device manufacturers, medical testing laboratories, clinical research organizations, government agencies, data vendors, healthcare applications or informatics companies, medical professional recruiters, practice insurance underwriters, medical professional associations, medical schools or direct marketers.
6. Limitations on Sanction Data. DMAS acknowledges that Supplier obtained provider sanction information in the Provider 360 Data from third party sources. Supplier represents that the sanction information in the Provider 360 Data is a correct copy of the information Supplier received from its sources. Supplier is not responsible for errors in sanction information or other Provider 360 Data originating with a third party data source or otherwise outside Supplier's control. Supplier has implemented appropriate processes to minimize mismatching of sanction data to providers; however, Supplier has no liability in the event of a mismatched sanction record. Upon confirmation of any mismatched sanction record, Supplier agrees to correct it in the Provider 360 Data within ten (10) business days of confirmation.
7. Limitations on Use of Provider 360 Data for Communication of Sensitive Information. Supplier has implemented appropriate processes to minimize inaccuracies in provider address, phone and fax Provider 360 Data in the Provider Data Solutions Database. However, due to the dynamic nature of providers' locations, Supplier cannot assure that all addresses and phone and fax numbers are accurate at any point in time. Therefore, Supplier strongly advises that DMAS not use Provider Data Solutions address, phone or fax Provider 360 Data to communicate Protected Health Information ("PHI") or similar sensitive data without confirming the address, phone or fax Provider 360 Data directly with the applicable provider, as the PHI or sensitive data may be communicated to an obsolete or incorrect location. Supplier is not responsible and has no liability for errors in address, phone or fax data, nor for any consequences resulting from communicating PHI or similar sensitive data to the wrong location.

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 (re)useable source and object code and all executables and documentation for all Work Product, except to the extent that non-Work Product is incorporated therein. Supplier shall at no time deny access to the Work Product, regardless of form, by the Commonwealth or the DMAS.

B. Ownership

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

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

C. Pre-existing Work

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

D. Return of Materials

Upon termination of this Contract, Supplier shall immediately return to DMAS all copies, in whatever form, of any and all Confidential Information, Work Product and other properties provided by DMAS, which are in Supplier's possession, custody or control, except to the extent that such return is not feasible unless required by law, in which event, Supplier shall destroy such information and certify such destruction to DMAS or, if neither return nor destruction is possible, Supplier shall retain such information on a confidential basis and not use it for any purpose.

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), as described in Exhibit A as follows:

A. Ownership and General Warranty

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 warranty period that result in Supplier's failure to meet the Requirement or its contractual obligations.

B. Limited Warranty

Intentionally Left Blank

C. Component Warranty

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

D. Interoperability Warranty

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

E. Performance Warranty

Supplier warrants and represents the following with respect to Performance that:

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. As of the Effective Date, the following Open Source code is part of the Solution, where the specific Open Source License that applies is set forth below:

<u>Open Source Software Description</u>	<u>Function</u>	<u>License Terms</u>
Open LDAP	Single Sign On	OpenLDAP Public License

		Version 2.8, 17 August 2003
JBOSS Business Process Management Suite*	Enterprise Service Bus, API, Web	GNU Lesser General Public License v. 2.1
	Services Rule Engine	

*This Open Source Software is only used by Supplier and not by DMAS.

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.

K. Limitation of Remedy for Breach of Warranty

In the event of a breach of any warranty by Supplier under this Contract, Supplier shall undertake such actions as may be necessary to cure the warranty that has been breached, at Supplier's sole cost and expense. Notwithstanding anything to the contrary in this Contract, if Supplier is unable to cure the warranty so it has not been breached within a period not to exceed sixty (60) days from the date Supplier receives DMAS' written notice specifying the warranty that Supplier has breached, unless otherwise extended by DMAS, then Supplier's entire monetary liability and DMAS' monetary remedy shall be limited to the following amounts described in the next two sentences. If the breach of warranty occurs during the DDI period of this Contract, then DMAS (1) shall be entitled to a refund of the price paid for the Solution or Component that was not as warranted, if any, and (2) may recover its actual direct damages, including DMAS' actual and reasonable cost to cover, (less the refund of monies paid, if any) arising out of the uncured warranty, but where Supplier's monetary liability for all uncured warranty breaches identified during the DDI period shall be subject to the limitation of liability described in Section 21 (B) of this Contract that is applicable the DDI period. If the breach of warranty occurs during an annual Operations and Maintenance period, then DMAS shall be entitled to recover only its actual direct damages arising out of the uncured warranty, including its actual and reasonable costs of cover, but where Supplier's monetary liability for all uncured warranty breaches identified during the annual Operations and Maintenance period shall be subject to the limitation of liability described in Section 21(B) of this Contract that is applicable during the Operations and Maintenance period.

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 and/or the then current, mutually agreed upon "EDWS DDI Project Schedule", 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.

Supplier agrees that failure to deploy the Solution (i.e. meet the "Go-Live" date) in accordance with the delivery schedule in the Contract and the then current, mutually agreed upon "EDWS DDI Project Schedule", shall constitute a material breach of this Contract resulting in damages to DMAS. As an estimate of the damages that DMAS shall suffer, Supplier agrees to credit DMAS an amount equal to one quarter of one percent of the total DDI Solution fee, for each day after the scheduled deployment date (i.e. "Go-Live" date) that the Solution has not been deployed due to the Supplier's failure to meet the EDWS DDI Project Schedule 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 DMAS' actual damages in lieu of any liquidated damages due to late delivery.

2. DMAS Installation of Software

If the Solution includes Software which may be installed by DMAS and DMAS elects to install the Software itself, the Software shall be deemed to be installed when all programs, program libraries and user interfaces are copied to and initialized on the appropriate equipment as executable by having DMAS invoke the primary function of each major Component of the Software or when Acceptance criteria as specified in the Contract or mutually agreed upon Test/Acceptance Criteria, as applicable, have been met. DMAS shall provide to Supplier timely written notice of Acceptance upon completion of installation and successful Acceptance/installation testing in accordance with the Project Plan and mutually agreed upon Test/Acceptance criteria. 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 J.11 of the RFP) 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 ("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 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, 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 Data 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)**.
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 six (6) weeks after the Effective Date, and (ii) a final draft of the Policy and Procedures Manual within twelve (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 to the extent DMAS or its authorized agent has provided the same to Supplier.

Compliance. Integrated Supplier shall perform the Services in accordance with applicable Laws, DMAS Rules and 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.

- b) 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 Customer management and Users via a secure web site in a manner consistent with DMAS's security policies to the extent DMAS or its authorized agent has provided the same to Supplier.
 - c) Regular Review. The Parties shall meet to perform reviews of the Policy and Procedures Manual as reasonably requested by DMAS.
 - d) 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 Contract to the Service Management Manual shall be deemed references to the Policy and Procedures Manual.
 - e) Work Product. As between the Parties, the Policy and Procedures Manual will be deemed to be a Work Product owned by DMAS.
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.

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 based upon the mutually agreed upon test criteria and DMAS notifies Supplier in writing of its acceptance or rejection on the basis of Contract Requirements (the "Acceptance Criteria for Software and Deliverables" and "Acceptance Criteria for the Solution" as described in "Quality Assurance/Test Management Plan"). 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, unless DMAS elects to proceed without the full functionality described in the Requirements. Acceptance of any one Deliverable shall not imply DMAS' concurrence that the Deliverable will function properly with or within the Solution. Supplier shall be responsible for ensuring that all Deliverables function properly within the Solution. Should a previously Accepted Deliverable require further modification in order to work properly with or within the Solution, Supplier shall be responsible for all costs associated with such modification.

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

B. Software and Deliverable Cure Period

Supplier shall correct any non-conformities identified during Acceptance testing and re-submit such non-conforming Software or Deliverable for re-testing within five (5) Business 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 hold payment associated with that Deliverable; (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 unless DMAS, in its sole discretion, elects to extend the cure period further. 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, for the portion thereof terminated. All costs of de-installation and return of product or Software shall be borne by Supplier. This remedy is subject to the limitation set forth in Section 21(B) of this Contract.

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 to the production environment. Supplier agrees to provide DMAS such assistance and advice as such DMAS may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses. Any such travel expenses must be pre-approved by DMAS and shall be reimbursable by DMAS at the then-current per diem amounts as published by the Virginia Department of Accounts [http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335 Meals Lodging 10200_8.pdf](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; 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 subject to the limitation set forth in Section 21(B) of this Contract

11. WARRANTY AND MAINTENANCE SERVICES

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

A. Known Defects

Promptly notify DMAS in writing of any Defects in the Solution as measured against the Requirements and when used in accordance with the Documentation or in the Documentation when measured against the agreed upon specification or Requirement (the "Defect") of which it learns from any source, correct any such defects or provide a work around until corrected, within a timeframe that shall be appropriate to the complexity and severity of the matter beginning upon

Supplier's knowledge of such Defect and provide DMAS with corrected copies of the relevant Documentation.

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, with the understanding that new releases for the portions of Supplier's Solution that consist of third party owned, Commercial Off the Shelf (COTS) Software would be made available as part of Supplier's Solution on a mutually agreed upon time frame.

C. Coverage

Supplier shall provide to DMAS all reasonably necessary telephone or written consultation requested by DMAS in connection with use, problems and operation of the Solution consistent with the portion of Supplier's Technical Proposal addressing Hours of Operation Requirements and Requirement EDWS –SR-POST-011. The Supplier will provide end user telephone consultation and email support (the "Help Desk Support") during the hours of 6:00AM-:800PM (Eastern Time), Monday through Friday excluding official Commonwealth of Virginia closed holidays (the "Help Desk Hours"). Additional Help Desk support outside of the Help Desk Hours can be arranged in advance to support DMAS during anticipated high-need periods. Critical issue system support, defined as handling any critical system availability issues, will be provided on a 24X7X365 basis by the Supplier.

D. Service Levels

During the Maintenance Period only, Supplier shall respond to Defects with the Solution identified by DMAS in no more than one (1) hour after notification during normal "Hours of Operations" as described in the Supplier's Technical Proposal. Supplier shall resolve all Defects according to the Severity Level corresponding to the applicable Defect in accordance with EDWS-SLA-08.

Resolution would occur if Supplier is able to provide a permanent or temporary fix or workaround, provided that if a temporary fix or workaround is provided, it must meet the conditions set forth in the immediately following sentences. First, the temporary fix or workaround shall be in place only for the period of time either initially proposed by Supplier to DMAS or as may be subsequently extended by written notification to DMAS while Supplier continues to use reasonable efforts to develop a more permanent resolution. Second, upon Supplier meeting the SLA by providing the temporary fix or workaround within the specified SLA Timelines for EDWS-SLA-08, DMAS shall notify Supplier whether the application of such temporary fix or workaround shall result in DMAS incurring additional cost with specific supporting detail, but no liquidated damage will be incurred by the Supplier. Third, if Supplier provides a temporary fix or workaround outside of the specified SLA Timeframe, Supplier shall pay the liquidated damage specified for the failure to meet the SLA until such time as a Resolution is provided. If DMAS notifies Supplier that DMAS will incur additional cost, Supplier shall (1) alter such temporary fix or workaround so that DMAS does not incur such additional cost, or (2) reimburse DMAS for DMAS' actual additional costs incurred above and beyond the amount of liquidated damage assessed until such time as a permanent resolution is provided.

Supplier and DMAS shall mutually agree upon the definitions and severity levels that shall be subject to the Service Level Agreement EDWS-SLA-08 found in Exhibit G, Attachment A via approval of the Supplier's "Quality Management Plan" and "Risk and Issues Management Plan," which include the escalation management plan during the DDI Phase. The level of severity (e.g. 1, 2, 3, and 4) applied to a specific Defect shall be based upon apply the facts to such definitions.

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

The following escalation procedures shall be followed with respect to risks and/or issues arising out of this Contract by both parties (the "Escalation Procedures"). Risks and issues shall first be surfaced by the Project Manager's for either party; i.e., by either the Department Project Manager or the Supplier Project Manager (the "First Level of Escalation"). If the applicable risk and/or issue is not resolved at the First Level of Escalation within ten (10) calendar days from the date that the issue or risk is first documented in writing by one party to the other party, either party may escalate the unresolved risk and/or issue to increasingly higher levels of management within each party based on the individuals within the reporting structure for each party described below:

Level of Escalation	DMAS Point of Contact	Supplier Point of Contact
Second	Mukundan Srinivasan, Chief Information Officer	Jayce Johnson, VP, Optum Government
Third	Scott Crawford, Deputy Director	David Gaio, SVP, Optum Government
Fourth	Cynthia Jones, Agency Director	Lee Valenta, EVP, Optum Government

Either party may change the name and/or title of one or more of the Escalation Levels set forth above, where such change shall be effective upon written notice to the other party provided under this Contract. With respect to each Level of Escalation, the applicable points of contact for each party shall have ten (10) calendar days from the date one Party receives written documentation of the unresolved risk and/or issue to resolve such risk and/or issue. Each party shall be responsible for communicating with their respective stakeholder leadership, as appropriate for unresolved risks and/or issues. Notwithstanding the foregoing, either party shall be free to invoke the dispute resolution process and/or seek judicial relief after escalating an unresolved risk or issue through the third level of escalation, except in those cases where emergent relief is required, including, without limitation, where injunctive relief is sought. In addition, the ten (10) calendar day time period shall not apply to those issues or risks deemed "critical" by one party, in which event, the time period shall be not more than two (2) business days.

G. Remedies

If Supplier is unable to make the Solution or any Component thereof conform, in all material respects to the Requirements set forth in the Contract, within sixty (60) days following written notification by DMAS (unless the time period is otherwise extended by DMAS), and provided that the failure is due to Supplier's Solution, DMAS shall be entitled to the remedies set forth in Section 8(K). DMAS shall discontinue use of any Solution Component Software or product that Supplier is unable to make conform to the Requirements of the Contract.

H. Solution Support Services (Maintenance)

Supplier shall provide Solution Support Services (Maintenance) during the Operations and Maintenance period of the Contract Term(s).

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

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

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.

During the Operations and Maintenance period, and for purposes of this Contract, Supplier shall be entitled to invoice the fixed monthly charges at the end of each month, where the end of the month shall be considered acceptance for invoicing purposes only. For purposes of clarity, the initial Operations and Maintenance period for which Supplier shall be entitled to invoice the fixed Monthly Charge shall commence on the first day of the twenty-fifth (25th) month following the Contract Effective Date.

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

13. STATUS MEETINGS

If requested by DMAS, the Account Team will be prepared to conduct weekly stewardship meetings with DMAS to provide a broad review of all services, projects and ongoing operations. Supplier

should also be prepared to conduct semi-annual meetings/presentations to discuss new products and services and their potential benefit to DMAS.

14. STEERING COMMITTEE

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

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

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

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

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

15. POLICIES AND PROCEDURES GUIDE

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

16. TRAINING AND DOCUMENTATION

A. Training

Supplier shall provide the training required under Appendix J.26 of the RFP, as described in Supplier's Technical Proposal described in Exhibit A and priced accordingly in Exhibit B.

B. Documentation

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

application or software and may duplicate such Documentation and include it in DMAS document or platform. Agency shall continue to include Supplier's copyright notice.

17. DMAS SELF-SUFFICIENCY

In addition to the Turnover & Transition Requirements, 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 only under the hourly rates set forth in Exhibit B and clarified by Contract Modification and/or mutually agreed upon terms. During and/or after the transition period, DMAS may, at its sole discretion, elect to order or continue Maintenance Services from Supplier, if authorized under the scope of the Contract, for any of the Software or hardware Product, components or Solution Components delivered to DMAS by Supplier.

18. COMPETITIVE PRICING

Supplier warrants and agrees that each of the charges, economic or product terms or warranties granted pursuant to this Contract are comparable to or better than the equivalent charge, economic or product term or warranty being offered to any commercial or government customer of Supplier under similar terms and conditions. If Supplier enters into any arrangements with another similarly situated 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 a copy of all Work Product in a (re)useable format, developed under this Contract for DMAS and any available English language technical and/or user documentation, if any (the "Escrowed Materials"), 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 the Escrowed Materials to the Commonwealth, as such release conditions are defined in this Contract, the Commonwealth's sole responsibility shall be to request the release of such Escrowed 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 the Escrowed Materials.

Supplier warrants that all Escrowed Materials shall be deposited in escrow for DMAS on a rolling semi-annual basis, such that updates or modifications to Escrowed Materials already deposited are added to prior deposits of the Escrowed Materials with that frequency. All Escrowed Material deposits 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 which is limited to the following:

- i. File List Test - To ensure the deposited items are catalogued and confirm they are readable, (re)useable, and virus free.
- 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. 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 solely upon the happening of Supplier's failure to carry out its support and maintenance obligations imposed by this Contract for a period of sixty (60) days and the failure to cure such breach within the applicable cure period set forth in the Contract, Supplier's bankruptcy, or 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 the Escrowed Materials.

20. CONFIDENTIALITY

A. Treatment and Protection

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

B. Exclusions

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

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

C. Return or Destruction

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

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

D. Confidentiality Statement

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

E. Business Associate Agreement (BAA)

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

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

21. INDEMNIFICATION AND LIABILITY

A. Indemnification

Supplier agrees to indemnify, defend and hold harmless the Commonwealth, DMAS, their officers, directors, agents and employees (collectively, "Commonwealth's Indemnified Parties") from and against any and all losses, damages, claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, assessments, fines, penalties (whether criminal or civil), judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Commonwealth's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) any act or omission of any employee, agent, or subcontractor of Supplier, (iii) breach of any representation, warranty or covenant of Supplier contained herein, (iv) any defect in the Supplier-provided products or services, or (v) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Supplier-provided products or services. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases involving the Commonwealth or state agencies, the selection and approval of counsel and approval of any settlement shall be satisfactory to the Commonwealth. In the event that a Claim is commenced against any of Commonwealth's Indemnified Parties alleging that use of the Supplier-provided products or services, including any components thereof, or that the Supplier's performance or delivery of any product or service under this Contract infringes any third party's intellectual property rights and Supplier is of the opinion that the allegations in such Claim in whole or in part are not covered by this indemnification provision, Supplier shall immediately notify DMAS in writing, via certified mail,

specifying to what extent Supplier believes it is obligated to defend and indemnify under the terms and conditions of this Contract. Supplier shall in such event protect the interests of the Commonwealth's Indemnified Parties and secure a continuance to permit DMAS to appear and defend their interests in cooperation with Supplier as is appropriate, including any jurisdictional defenses DMAS may have.

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

B. Liability

Except for liability with respect to (i) any intentional or willful misconduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) Supplier's confidentiality obligations, (iii) Supplier's security compliance obligations, and (iv) Supplier's data privacy and security obligations as specified under this Contract, Supplier's liability shall be limited to the total Design Development, and Implementation (DDI) price if the claim arises during the Design Development, and Implementation period and the total value of the contract if the claim arises during an Operations and Maintenance Period. 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, with an aggregate cap of three times the Contract value, it being understood that multiple losses stemming from the same root cause constitute a single incident.

To the extent that the same incident results in Supplier paying a liquidated damage and DMAS proves its actual damages to be in excess of the liquidated damages amount, Supplier shall reimburse DMAS for DMAS' actual damage less the liquidated damages paid for the same incident, subject to the limitation of the preceding sentence.

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 initial performance bond includes the first twenty-four months of the Design, Development and Implementation (DDI)/Start-up period of the Contract (ending June 30, 2020) 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 the last day of the month immediately preceding the annual covered period 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 the last day of the month immediately preceding each annual covered period 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. 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 contractual provisions at the following URL are mandatory contractual provisions, required by law or by VITA, and are incorporated by reference:

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

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

If this Contract 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 to that order, SOW and Contract. 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. 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 VITA, as a material breach of the applicable order or SOW or 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 (i.e., Authorized Users of this Contract, as defined herein) 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).

The terms and conditions in documents posted to the aforereferenced URLs are subject to change pursuant to action by the legislature of the Commonwealth of Virginia, change in VITA 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 VITA Authorized User issuing the order or SOW 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.

C. Compliance with the Federal Lobbying Act

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

D. Governing Law

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

E. Dispute Resolution

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

The Supplier may not invoke any available administrative procedure under §2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the decision of the relevant public body on the claim, unless that public body fails to render its decision within thirty (30) days or unless the last sentence of this Section applies. 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, except if Supplier obtains injunctive relief to terminate any License or Support Services affirming that right arising out of the Commonwealth's breach of its obligations to abide by applicable license or support obligations. Notwithstanding the foregoing, if the Commonwealth, through its acts or omissions, fails to honor its confidentiality obligations, license obligations with respect to data or software or other actions where Supplier or third party vendors to Supplier would be irreparably harmed without the grant of injunctive relief, the Supplier shall be entitled to seek immediate injunctive relief in a court of competent jurisdiction in Virginia.

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 reserves any and all other remedies that may be available at law or in equity, subject to the limitations set forth herein.

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

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

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 Omitted;
- v). Exhibit E - Certification Regarding Lobbying;
- vi). Exhibit F – DMAS Business Associate Agreement (BAA).
- vii) Exhibit G – Cloud Services - 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 except to the extent incorporated into this Contract and/or its Exhibits. The provisions of the Virginia Department of General Services, Division of Purchases and Supply Vendor's Manual shall not apply to this Contract or any order issued hereunder. This Contract may only be amended by an instrument in writing signed by DMAS and Supplier. In the event of a conflict, the following order of precedence shall apply: this Contract, Exhibit G, Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit F and Exhibit E.

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

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

DMAS

SUPPLIER: OPTUM GOVERNMENT SOLUTIONS, INC.

By: Cynthia B. Jones
(Signature)

By: Jean C. Benson
(Signature)

Name: Cynthia B. Jones
(Print)

Name: Jean C. Benson
(Print)

Title: Director

Title: SVP, Opt um Corporate Finance

Date: Oct 11, 2017

Date: October 10, 2017

Address for Notice:

Address for Notice:

600 E. Broad St.
Richmond, VA 23219

11000 Optum Circle
Eden Prairie, Minnesota 55344

Attention: Supplier Contact

Attention: Contract Administrator

EXHIBIT A – REQUIREMENTS

For purposes of this Exhibit A, the term "Requirements" shall mean the following documents:

1. Request for Proposals RFP 2016-05 dated June 15, 2016 for an Enterprise Data Warehouse Solution (the "Original RFP");
2. RFP Addendum 1 dated June 27, 2016;
3. RFP Addendum 2 dated July 5, 2016;
4. RFP Addendum 3 dated July 11, 2016;
5. RFP Addendum 4 dated July 15, 2016;
6. RFP Addendum 5 dated July 20, 2016;
7. RFP Addendum 6 dated July 20, 2016;
8. RFP Addendum 7 dated August 1, 2016;
9. RFP Addendum 8 dated August 5, 2016;
10. RFP Addendum 9 dated August 8, 2016;
11. Optum's Technical Proposal dated August 19, 2016;
12. Optum's Response to DMAS Evaluation Team Questions for Offerors dated October 26, 2016;
13. Optum's Response to Evaluation Team Questions to Offerors dated November 16, 2016;
14. Optum's Oral Presentation and Demo dated November 30, 2016, presented to DMAS December 1, 2016;
15. Optum's Response to Oral Presentation Takeaway Questions dated December 9, 2016;
16. Optum's Revised SWaM Procurement Plan for the Optum Hosted Proposal dated January 10, 2017;
17. Optum's Response to ECOS dated January 26, 2017;
18. Optum's Response to DMAS' Additional Questions dated February 10, 2017, including, without limitation, the RACI Matrix outlining the roles and responsibilities by and among Optum, DMAS and VITA for security related matters;
19. Optum's Meeting with DMAS and VITA dated February 27, 2017;
20. Optum's Response to DMAS Request for Questions and Clarifications dated March 3, 2017;
21. Optum's Response to DMAS' Request for Clarifications dated March 10, 2017;
22. Optum's Negotiation Meeting Dated March 22, 2017;
23. Optum's Response to DMAS Request for Clarifications dated April 3, 2017;
24. Optum's Meeting with DMAS re 6 Month Extension dated April 4, 2017;
25. Optum's FADS Demonstration dated April 4, 2017;
26. Optum's Response to DMAS Request for Clarifications dated April 13, 2017; and
27. Optum's Updated Project Work Plan and Timeline dated July 24, 2017.

EXHIBIT B – SOLUTIONS OPTIONS LIST; FEES, SERVICE CHARGES, AND PAYMENT SCHEDULE

For purposes of this Exhibit B, the Term "Solution Options; List; Fees; Service Options and Payment Schedule" shall mean the following documents:

1. The Optum Hosted Pricing Proposal dated April 26, 2017,
2. The Optum Small Business (SWaM) Procurement Plan dated January 10, 2017; and
3. The Optum Revised Payment Milestone Schedule dated September 12, 2017 (V3).

1.2 Appendix C - Pricing Schedule

Time Period for this Stage: July 1, 2016 to June 30, 2017				
	Number of Months (N)	Price per Month (PPM)	Total Price (N*PPM)	Calculated Percent Total Price (Total Price/Total Stage Price *100)
(A.1) Fixed Monthly Payments	12	\$549,980.14	\$6,599,761.68	32.34%
(A.1) CMS 64	N/A	N/A	\$1,273,113.73	9.24%
(A.2) Quality Maintenance Payments Price	N/A	N/A	\$964,725.68	7.00%
(A.3) Licenses Price[1]	N/A	N/A	\$4,530,740.38	32.87%
(A.4) CMS Certification Quality Maintenance Payments Price	N/A	N/A	\$413,454.00	3.00%
(A.5) Total Stage Price (Sum A.1 – A.4)	N/A	N/A	\$13,781,795.47	100%

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

Optum Hosted												
Optional Enhancements	Price											
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total	
	Term License Fee	Annual Maintenance Charge	Annual Maintenance Charge	Annual Maintenance Charge	Annual Maintenance Charge	Annual Maintenance Charge	Annual Maintenance Charge	Annual Maintenance Charge	Annual Maintenance Charge	Annual Maintenance Charge	Annual Maintenance Charge	
Meeting Space - Optional Pricing	(1.1)	\$18,361.31	\$18,361.31	\$18,361.31	\$18,361.31	\$18,361.31	\$10,920.63	\$10,920.63	\$10,920.63	\$10,920.63	\$10,920.63	\$146,409.70
Teradata@ Data Lab	(1.2)			\$187,400.00	\$46,300.00	\$46,300.00	\$47,700.00	\$49,300.00	\$50,900.00	\$52,600.00	\$54,300.00	\$534,800.00
Teradata Parallel Data Pump	(1.3)	\$144,600.00	\$33,600.00	\$33,600.00	\$34,700.00	\$35,900.00	\$37,200.00	\$38,400.00	\$39,700.00	\$41,100.00	\$42,500.00	\$481,300.00
Teradata@ Columnar	(1.4)	\$178,300.00	\$41,500.00	\$41,500.00	\$42,900.00	\$44,300.00	\$45,800.00	\$47,400.00	\$49,000.00	\$50,700.00	\$52,400.00	\$593,800.00
ICD-10 MapSelects	(1.5)	\$35,000.00	\$35,000.00									\$70,000.00
Total Price for Optional Enhancements[2]	(1.9)	\$376,261.31	\$93,461.31	\$280,861.31	\$142,261.31	\$144,861.31	\$141,620.63	\$146,020.63	\$150,520.63	\$155,320.63	\$160,120.63	\$1,756,309.70
(Sum J.1 – J.6)												

[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.

Time Period for this Stage: July 1, 2017 to June 30, 2018				
	Number of Months (N)	Price per Month (PPM)	Total Price (N*PPM)	Calculated Percent Total Price (Total Price/Total Stage Price *100)
(A.6) Fixed Monthly Payments	12	\$476,068.11	\$5,712,817.32	32.34%
(A.6) CMS 64	N/A	N/A	\$58,889.48	0.73%
(A.7) Quality Maintenance Payments Price	N/A	N/A	\$564,560.41	7.00%
(A.8) Licenses Price[1]	N/A	N/A	\$1,486,927.02	18.44%
(A.9) CMS Certification Quality Maintenance Payments Price	N/A	N/A	\$241,954.46	3.00%
(A.10) Total Stage Price (Sum A.6 – A.9)	N/A	N/A	\$8,065,148.68	100%

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

[2] This column should include DDI and any partial implementation costs

Time Period for this Stage: July 1, 2018 – June 30, 2019				
	Number of Months (N)	Price per Month (PPM)	Total Price (N*PPM)	Calculated Percent Total Price (Total Price/Total Stage Price *100)
(B.1) Fixed Monthly Payments	12	\$482,163.07	\$5,785,956.84	68%
(B.1) CMS 64	N/A	N/A	\$168,650.98	2%
(B.2) Licenses Price[1]	N/A	N/A	\$1,470,555.97	17%
(B.3) Configuration/ Customization Price[2]	N/A	N/A	\$1,028,800.20	12%
(B.4) Total Stage Price (Sum B.1 – B.3)	N/A	N/A	\$8,453,963.98	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.

Time Period for this Stage: July 1, 2019 – June 30, 2020				
	Number of Months (N)	Price per Month (PPM)	Total Price (N*PPM)	Calculated Percent Total Price (Total Price/Total Stage Price *100)
(C.1) Fixed Monthly Payments	12	\$460,885.25	\$5,530,623.00	65%
(C.1) CMS 64	N/A	N/A	\$177,135.50	2%
(C.2) Licenses Price[1]	N/A	N/A	\$1,717,405.26	20%
(C.3) Configuration/ Customization Price[2]	N/A	N/A	\$1,028,800.20	12%
(C.4) Total Stage Price (Sum C.1 – C.3)	N/A	N/A	\$8,453,963.95	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.

Time Period for this Stage: July 1, 2020 – June 30, 2021				
	Number of Months (N)	Price per Month (PPM)	Total Price (N*PPM)	Calculated Percent Total Price (Total Price/Total Stage Price *100)
(D.1) Fixed Monthly Payments	12	\$458,178.62	\$5,498,143.44	65%
(D.1) CMS 64	N/A	N/A	\$177,956.42	2%
(D.2) Licenses Price[1]	N/A	N/A	\$1,749,063.86	21%
(D.3) Configuration/ Customization Price[2]	N/A	N/A	\$1,028,800.20	12%
(D.4) Total Stage Price (Sum D.1 – D.3)	N/A	N/A	\$8,453,963.92	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.

Time Period for this Stage: July 1, 2021 - June 30, 2022				
	Number of Months (N)	Price per Month (PPM)	Total Price (N*PPM)	Calculated Percent Total Price (Total Price/Total Stage Price *100)
(E.1) Fixed Monthly Payments	12	\$453,460.80	\$5,441,529.60	64%
(E.1) CMS 64	N/A	N/A	\$183,365.29	2%
(E.2) Licenses Price[1]	N/A	N/A	\$1,800,268.91	21%
(E.3) Configuration/ Customization Price[2]	N/A	N/A	\$1,028,800.20	12%
(E.4) Total Stage Price (Sum E.1 - E.3)	N/A	N/A	\$8,453,964.00	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.

Time Period for this Stage: July 1, 2022 – June 30, 2023				
	Number of Months (N)	Price per Month (PPM)	Total Price (N*PPM)	Calculated Percent Total Price (Total Price/Total Stage Price *100)
(F.1) Fixed Monthly Payments	12	\$446,292.89	\$5,355,514.68	63%
(F.1) CMS 64	N/A	N/A	\$193,591.59	2%
(F.2) Licenses Price[1]	N/A	N/A	\$1,876,057.45	22%
(F.3) Configuration/ Customization Price[2]	N/A	N/A	\$1,028,800.20	12%
(F.4) Total Stage Price (Sum F.1 – F.3)	N/A	N/A	\$8,453,963.92	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.

Time Period for this Stage: July 1, 2023 – June 30, 2024				
	Number of Months (N)	Price per Month (PPM)	Total Price (N*PPM)	Calculated Percent Total Price (Total Price/Total Stage Price *100)
(G.1) Fixed Monthly Payments	12	\$471,477.40	\$5,657,728.80	64%
(G.1) CMS 64	N/A	N/A	\$200,077.00	2%
(G.2) Licenses Price[1]	N/A	N/A	\$1,913,137.82	22%
(G.3) Configuration/ Customization Price[2]	N/A	N/A	\$1,028,800.20	12%
(G.4) Total Stage Price (Sum G.1 – G.3)	N/A	N/A	\$8,799,743.82	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.

Time Period for this Stage: July 1, 2024 – June 30, 2025				
	Number of Months (N)	Price per Month (PPM)	Total Price (N*PPM)	Calculated Percent Total Price (Total Price/Total Stage Price *100)
(H.1) Fixed Monthly Payments	12	\$482,158.63	\$5,785,903.56	64%
(H.1) CMS 64	N/A	N/A	\$207,648.50	2%
(H.2) Licenses Price[1]	N/A	N/A	\$1,971,948.13	22%
(H.3) Configuration/ Customization Price[2]	N/A	N/A	\$1,028,800.20	11%
(H.4) Total Stage Price <i>(Sum H.1 – H.3)</i>	N/A	N/A	\$8,994,300.38	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.

Time Period for this Stage: July 1, 2025 – June 30, 2026				
	Number of Months (N)	Price per Month (PPM)	Total Price (N*PPM)	Calculated Percent Total Price (Total Price/Total Stage Price *100)
(I.1) Fixed Monthly Payments	12	\$281,566.28	\$3,378,795.36	36%
(I.1) CMS 64	N/A	N/A	\$2,834,850.90	31%
(I.2) Licenses Price[1]	N/A	N/A	\$2,035,909.34	22%
(I.3) Configuration/ Customization Price[2]	N/A	N/A	\$1,028,800.20	11%
(I.4) Total Stage Price (Sum I.1 – I.3)	N/A	N/A	\$9,278,355.80	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	
Meeting Space - Optional Pricing	(J.1)	\$146,409.70
Teradata® Data Lab	(J.2)	\$534,800.00
Teradata Parallel Data Pump	(J.3)	\$481,300.00
Teradata® Columnar	(J.4)	\$593,800.00
ICD-10 MapSelects	(J.5)	\$70,000.00
Optional Consulting Support		
Vice President Hourly Rate	(J.6)	\$300.00
Managing Consultant Hourly Rate	(J.7)	\$270.00
Senior Consultant Hourly Rate	(J.8)	\$240.00
Consultant Hourly Rate	(J.9)	\$180.00
Research Consultant Hourly Rate	(J.10)	\$150.00
Sr. Research Analyst Hourly Rate	(J.11)	\$145.00
Total Price for Optional Enhancements[2]		
(Sum J.1 – J.11)	(J.12)	\$1,827,594.70

[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	\$126.00	(K.1)	\$262,080.00
1.0 FTE	Customization Staff	2,080	\$130.00	(K.2)	\$270,400.00
2.0 FTE	TOTAL Configuration and Customization Staff <i>(sum of K.1 and K.2)</i>	4,160		(K.3)	\$532,480.00
Staff to Support 4,160 hours Configuration and Customization per year					
	Testing and Validation Staff	1135	\$ 126.00	(K.4)	\$143,010.00
	Business Analyst Staff	1513	\$ 107.00	(K.5)	\$161,891.00
	Technical Writing and System Documentation Staff	756	\$ 104.20	(K.6)	\$78,775.20
	Project Management Staff	756	\$ 149.00	(K.7)	\$112,644.00
	TOTAL for Configuration and Customization Support Staff <i>(sum of K.4, K.5, K.6, and K.7)</i>			(K.8)	\$496,320.20
	TOTAL for providing 4160 hours of Configuration and Customization <i>(sum of K.3 and K.8)</i>			(K.9)[2]	\$1,028,800.20
Cost of Living Assessment (COLA) Factor (Per SFY) if the Department requires the purchase of additional Enhancement hours.					2.50%

[1] Hourly Rates shall be effective from DDI Contract Stage 1, SFY 2016-17, through contract based period, O&M Contract Stage SFY2025-26.

[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.

License Description (Terms and Options)	Quantity	Unit Price	Total Price
Prod - IBM - Cognos BI Administrator - License Type: User	6	\$43,534.40	\$261,206.41
Prod - IBM - Cognos BI Explorer - License Type: User	5	\$7,192.64	\$35,963.20
Prod - IBM - Cognos BI User - License Type: User	45	\$3,868.31	\$174,073.99
Prod - Tableau - Tableau Server - License Type: Core	24	\$108,294.92	\$2,599,078.04
Prod - Symmetry - Optum Symmetry ETG/ERG, EBM Connect - License Type: Covered Lives	1,200,000	\$1.20	\$1,440,791.18
Prod - Microsoft - Sharepoint - License Type: Core	3	\$27,184.83	\$81,554.50
Prod - Microsoft - Sharepoint - License Type: CAL	100	\$489.32	\$48,932.32
Prod - Informatica - B2B HIPAA Library - License Type: Env	1	\$97,379.69	\$97,379.69
Prod - Informatica - B2B HL7 Library - License Type: Env	1	\$97,379.69	\$97,379.69
Prod - Informatica - B2B NCPDP Library - License Type: Env	1	\$97,379.69	\$97,379.69
Prod - Informatica - Informatica Metadata Manager - License Type: Env	1	\$243,449.24	\$243,449.24
Prod - Informatica - Informatica Address Doctor - Address Cleanse - License Type: Core	1	\$19,873.41	\$19,873.41
Prod - Informatica - Informatica Address Doctor - GeoCode Cleanse - License Type: Core	1	\$38,156.94	\$38,156.94
Prod - Informatica - Informatica Data Quality Advanced Edition - License Type: Core	8	\$107,813.23	\$862,505.84
Prod - Informatica - Informatica Data Quality Accelerator - License Type: Core	1	\$17,389.24	\$17,389.24
Prod - Informatica - Informatica PowerCenter Premium Edition - License Type: Core	8	\$104,335.38	\$834,683.07
Prod - Informatica - Powerexchange for Tableau - License Type: Instance	1	\$41,734.17	\$41,734.17
Prod - Informatica - MDM Cleanse Adapter for Address Doctor - License Type: Core	1	\$69,556.96	\$69,556.96
Prod - Informatica - BPM Option for MDM / ActiveVOS Screenflow - License Type: Core	1	\$13,354.92	\$13,354.92
Prod - Informatica - Informatica MDM - License Type: Instance	1	\$695,569.22	\$695,569.22
Prod - Informatica - Informatica MDM (additional domain) - License Type: Instance	1	\$132,158.16	\$132,158.16
Prod - Informatica - Informatica B2C (Consolidated Customer) - License Type: Recs	1,260,847	\$0.97	\$1,227,809.87
Prod - Informatica - Informatica B2C (Consolidated Provider) - License Type: Recs	500,000	\$0.97	\$486,898.46
Prod - Informatica - Informatica Test Data Manager - License Type: Core	8	\$79,990.46	\$639,923.69
Prod - Optum - Optum MARS - License Type: Client	1	\$3,037,165.88	\$3,037,165.88
Prod - Optum - Optum FADS - License Type: Client	1	\$5,498,987.49	\$5,498,987.49
Prod - Red Hat - Red Hat Enterprise Linux - License Type: Core	3	\$12,635.53	\$37,906.59
Prod - BMC - Footprints Agent - Concurrent - License Type: Concur	7	\$10,170.23	\$71,191.58
Prod - BMC - Footprints Agent - User - License Type: User	1	\$6,002.09	\$6,002.09
Prod - BMC - Footprints Suite - Software - License Type: Env	1	\$26,659.31	\$26,659.31
Prod - Microsoft - SQL Server 2012 Standard - License Type: Core	10	\$14,337.87	\$143,378.68
Prod - Teradata - Query Grid for Prod & Non-Prod - License Type: Core	1	\$27,348.06	\$27,348.06
Prod - Teradata - Teradata Subscription - 2800 Software Bundle, per each 2 nodes - License Type: Core	1	\$103,103.71	\$103,103.71
Prod - Oracle - Oracle Audit Vault/Database Firewall - License Type: Core	9	\$7,376.56	\$66,389.05

<i>Prod - Optum - Provider Dataset - License Type: MultiEnv</i>	1	\$326,276.52	\$326,276.52
<i>NonProd - Teradata - Query Grid for Prod & Non-Prod - License Type: Core</i>	1	\$27,348.06	\$27,348.06
<i>NonProd - Teradata - Teradata Subscription - 2800 Software Bundle, per each 2 nodes - License Type: Core</i>	1	\$103,103.71	\$103,103.71
<i>NonProd - Oracle - Oracle Audit Vault/Database Firewall - License Type: Core</i>	9	\$7,376.56	\$66,389.05
<i>NonProd - Informatica - Multi-Product Lab License - License Type: Core</i>	1	\$267,098.60	\$267,098.60
<i>NonProd - Informatica - Informatica Address Doctor - Address Cleanse - License Type: Core</i>	2	\$19,873.42	\$39,746.84
<i>NonProd - Informatica - Informatica Address Doctor - GeoCode Cleanse - License Type: Core</i>	2	\$38,156.95	\$76,313.90
<i>NonProd - Microsoft - Project Pro - License Type: User</i>	5	\$3,324.72	\$16,623.59
<i>NonProd - Microsoft - Visio - License Type: User</i>	5	\$1,705.80	\$8,529.01
<i>NonProd - Microsoft - Sharepoint - License Type: Core</i>	3	\$27,184.83	\$81,554.50
<i>NonProd - Microsoft - Sharepoint - License Type: CAL</i>	100	\$489.32	\$48,932.32
<i>NonProd - Tableau - Tableau Desktop - License Type: Desktop</i>	33	\$5,371.43	\$177,257.12
<i>NonProd - Red Hat - Red Hat Enterprise Linux - License Type: Env</i>	3	\$12,635.53	\$37,906.59
Total Licensing Price		\$11,629,820.14	\$20,552,014.14
(sum of L.1, L.2 L.3, L.4, L.5, and L.6)			

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

CMS 64 Related Costs			
<i>Prod - Optum CMS 64 MARS - License Type: Client</i>	1	\$2,036,441.13	\$2,036,441.13
<i>Prod - Oracle - Oracle Audit Vault/Database Firewall - License Type: Core</i>	9	\$7,376.56	\$66,389.05
<i>NonProd - Oracle - Oracle Audit Vault/Database Firewall - License Type: Core</i>	9	\$7,376.56	\$66,389.05
Total Licensing Price for CMS 64		\$2,051,194.25	\$2,169,219.22

Labor Category[1]	Hourly Rate
Account Manager	\$215.00
Business Analyst Junior	\$132.00
Cognos Developer Junior	\$156.00
Data Modeller Senior	\$180.00
DBA	\$180.00
DBA - Senior	\$172.00
ETL Developer	\$156.00
ETL Engineer and Database Developer	\$143.00
ETL Specialist	\$132.00
FADS Analytic Dev.	\$128.00
FADS Business Analyst/QA	\$128.00
FADS Cognos	\$152.00
FADS ETL	\$152.00
FADS Java Developer	\$152.00
FADS Product Analyst/SME	\$172.00
FADS Product Manager	\$172.00
Hardware/Infrastructure Specialist	\$113.00
Help Desk/Call Center Representative	\$95.00
Product Analyst	\$180.00
Product Manager	\$180.00
Project Manager	\$176.00
Project Manager Senior	\$215.00
Report Developer	\$162.00
Technical Production Support	\$180.00

[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)	\$13,781,795.47
Total Implementation Contract Stage 1 SFY 2017-18 (Total Stage Price from Schedule A.10)	(A.10)	\$8,065,148.68
Total Ongoing Operations and Maintenance, Contract Stage SFY 2017-18 (Total Stage Price from Schedule B)	(B.4)	\$8,453,963.98
Total Ongoing Operations and Maintenance, Contract Stage SFY 2018-19 (Total Stage Price from Schedule C)	(C.4)	\$8,453,963.95
Total Ongoing Operations and Maintenance, Contract Stage SFY 2019-20 (Total Stage Price from Schedule D)	(D.4)	\$8,453,963.92
Total Ongoing Operations and Maintenance, Contract Stage SFY 2020-21 (Total Stage Price from Schedule E)	(E.4)	\$8,453,964.00
Total Ongoing Operations and Maintenance, Contract Stage SFY 2021-22 (Total Stage Price from Schedule F)	(F.4)	\$8,453,963.92
Total Ongoing Operations and Maintenance, Contract Stage SFY 2022-23 (Option Year Renewal) (Total Stage Price from Schedule G)	(G.4)	\$8,799,743.82
Total Ongoing Operations and Maintenance, Contract Stage SFY 2023-24 (Option Year Renewal) (Total Stage Price from Schedule H)	(H.4)	\$8,994,300.38
Total Ongoing Operations and Maintenance, Contract Stage SFY 2024-25 (Option Year Renewal) (Total Stage Price from Schedule I)	(I.4)	\$9,278,355.80
Operations and Maintenance Subtotal (Sum B.4, C.4 D.4, E.4, F.4, G.4, H.4 and I.4)	(O&M)	\$69,342,219.77
Total Price Bid[1] (sum of A.5, A.10 and O&M)	(Total)	\$91,189,163.92

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

Revised Optum Hosted Pricing Schedule J Detail

Optum Hosted												
Optional Enhancements	Price											
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total	
	Term License Fee	Annual Maintenance Charge	Annual Maintenance Charge	Annual Maintenance Charge	Annual Maintenance Charge	Annual Maintenance Charge	Annual Maintenance Charge	Annual Maintenance Charge	Annual Maintenance Charge	Annual Maintenance Charge	Annual Maintenance Charge	
Meeting Space - Optional Pricing	(1.1)	\$18,361.31	\$18,361.31	\$18,361.31	\$18,361.31	\$18,361.31	\$10,920.63	\$10,920.63	\$10,920.63	\$10,920.63	\$10,920.63	\$146,409.70
Teradata@ Data Lab	(1.2)			\$187,400.00	\$46,300.00	\$46,300.00	\$47,700.00	\$49,300.00	\$50,900.00	\$52,600.00	\$54,300.00	\$534,800.00
Teradata Parallel Data Pump	(1.3)	\$144,600.00	\$33,600.00	\$33,600.00	\$34,700.00	\$35,900.00	\$37,200.00	\$38,400.00	\$39,700.00	\$41,100.00	\$42,500.00	\$481,300.00
Teradata@ Columnar	(1.4)	\$178,300.00	\$41,500.00	\$41,500.00	\$42,900.00	\$44,300.00	\$45,800.00	\$47,400.00	\$49,000.00	\$50,700.00	\$52,400.00	\$593,800.00
ICD-10 MapSelects	(1.5)	\$35,000.00	\$35,000.00									\$70,000.00
Total Price for Optional Enhancements[2]	(1.9)	\$376,261.31	\$93,461.31	\$280,861.31	\$142,261.31	\$144,861.31	\$141,620.63	\$146,020.63	\$150,520.63	\$155,320.63	\$160,120.63	\$1,756,309.70
(Sum J.1 – J.6)												

[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.

1. Small Business (SWaM) Procurement Plan

Contractor shall provide a completed SWaM Procurement Plan, which is included in RFP Appendix B, according to the instructions laid forth in RFP Section 9.c, Small Business (SWaM) Procurement Plan.

It is the policy of Virginia to contribute to the establishment, preservation, and strengthening of small businesses and micro businesses including those small or micro businesses owned by women, minorities or service-disabled veterans and to encourage their participation in State procurement activities. Virginia encourages all Contractors (Suppliers) to provide for the participation of these small businesses through partnerships, joint ventures, subcontracts, and other contractual opportunities.

A Contractor which is a small business, a small woman-owned business, a small minority-owned business or a small service disabled veteran-owned business, as defined in § 2.2-4310 or 2.2-1401 of the Code of Virginia, or a certified micro business as defined in Executive Order Number 20 (2014), is a SWaM business. If Contractor is a SWaM business, the Contractor shall include a copy of all Virginia SWaM certifications with its proposal. No Contractor shall be considered a small business, a woman-owned business, a minority-owned business, a service-disabled veteran business or a micro business unless certified by SBSB. For information, go to: <http://www.sbsd.virginia.gov/>.

Please provide a Small Business (SWaM) Procurement Plan as set forth in Appendix B – SWaM Procurement and Subcontracting Monthly Report and Small Business (SWaM) Procurement Plan of this RFP. In the submitted Small Business (SWaM) Procurement Plan, please state the percentage of the contract's value that will be spent with SWaM subcontractors. Please also include in your plan a list of all subcontractors you plan to utilize who are not Virginia-certified SWaM businesses. If Contractor does not plan to use small business subcontractors in executing a contract resulting from this RFP, so state. Appendix B shall be included within Volume 2 – Cost Proposal as indicated in RFP Section 9.b.2.2.

1.1 Appendix B – Swam Procurement and Subcontracting Monthly Report And Small Business (SWaM) 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 SBSD 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 Contractor s 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@dmas.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 SBSD online at <http://www.sbsd.virginia.gov/>.

Offeror Name: Optum Government Solutions, Inc.

Preparer Name: Andrea Shook

Date: January 10, 2017

INSTRUCTIONS

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

SECTION A

If your firm is certified by the SBSB 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: _____

SECTION B

Populate the table below to show your firm's plans for utilization of SBSD-certified small businesses in the performance of this contract. This shall not exclude SBSD-certified micro businesses or women, minority, or service disabled veteran-owned businesses when they have received the SBSD 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
Name: Athena Consulting, LLC Address: 506 Main St., Suite 215, Gaithersburg MD 20878 SWaM Certificate #: 647712	W	Contact: Melissa Pappas Phone: (301) 216.9654 Email: mpappas@athenajobs.com	Staff Augmentation	Athena Consulting, LLC, will provide key personnel consisting of a Metadata Management Specialist; Data Quality Monitoring Tool Administrator and Specialist; and Help Desk/Call Center Specialist if the Optum Hosted Proposal is accepted.	\$623,300
Name: eSense, Inc. Address: 14799 Davenport Drive, Fishers, Indiana 46037 SWaM Certificate #: 682525	M	Contact: Sanjay Vaze Phone: (317) 490-2570 Email: Sanjay.Vaze@esense-inc.com	Staff Augmentation	eSense, Inc., will provide key personnel consisting of a Hardware/Infrastructure Specialist, Senior ETL Engineer and Database Developer, and ETL Engineer and Database Developer if the Optum Hosted Proposal is accepted, but the Hardware/Infrastructure Specialist will only be provided during the Maintenance and Operations portion of the Initial Term.	\$1,907,160
Totals \$					\$2,530,460

Optum does not plan on using any non-SWaM-certified subcontractors, where a subcontractor would be an unaffiliated entity to Optum who would be performing a portion of the Services expressly required by the RFP and therefore would exclude any supplier of Commercial Off the Shelf (“COTS”) software, hardware or standard software support or hardware maintenance services typical of suppliers.

Pricing Table A - Implementation Phase Prices

Contractor: Optum Government Solutions, Inc.

Contract Month of Targeted Fully Operational Start Date: Phase 1 - 9/14/18; Phase 2 - 12/6/19; Phase 3 - 1/10/20

Phase	Payment Milestone No.	Milestone Name	Contract Month of Milestone	Fixed Price	3% Certificaton	7% Holdback	Payment	Deliverable(s) Integrated From Addendum 8	Schedule from Addendum 8
1	1	Approved Master Work Plan	7/17/2017	\$ 1,011,477.67	\$ 30,344.33	\$ 70,803.44	\$ 910,329.90	Master Work Plan (in MS Project)	4 weeks after contract signed and weekly thereafter
1	2	Approved Project Management Plan	8/25/2017	\$ 3,034,432.99	\$ 91,032.99	\$ 212,410.31	\$ 2,730,989.69		
1	2	Approved Project Management Plan	8/25/2017					Project Charter – Input to DMAS prepared deliverable	2 weeks after contract signed
1	2	Approved Project Management Plan	8/25/2017					Contractor Management Team Organization Chart	2 weeks after contract signed
1	2	Approved Project Management Plan	8/25/2017					Performance Reporting Plan and Status Summary	6 weeks after contract signed and weekly thereafter
1	2	Approved Project Management Plan	8/25/2017					Detailed Project Management Plan	2 weeks after contract signed
1	2	Approved Project Management Plan	8/25/2017					Communications Management Plan	6 weeks after contract signed and weekly thereafter
1	2	Approved Project Management Plan	8/25/2017					Staff Acquisition Plan	6 weeks after contract signed and weekly thereafter
1	2	Approved Project Management Plan	8/25/2017					Documentation Management Plan	12 weeks after contract signed and each week thereafter
1	2	Approved Project Management Plan	8/25/2017					Risk and Issues Management Plan, includes Escalation Management Plan	12 weeks after contract signed and each week thereafter
1	2	Approved Project Management Plan	8/25/2017					Scope/Deliverable Management Plan	4 weeks after contract signed and each week thereafter
1	2	Approved Project Management Plan	8/25/2017					Requirements Management Plan	12 weeks after contract signed and each week thereafter
1	2	Approved Project Management Plan	8/25/2017					Change Management Plan	10 weeks after contract signed and each week thereafter
1	2	Approved Project Management Plan	8/25/2017					Configuration Management Plan	8 weeks after contract signed and part of project execution and control thereafter
1	2	Approved Project Management Plan	8/25/2017					CMS Certification Plan	12 weeks after contract signed and updated each week thereafter
1	3	Approved Architecture Plan	9/1/2017	\$ 3,034,432.98	\$ 91,032.99	\$ 212,410.31	\$ 2,730,989.68		

Pricing Table A - Implementation Phase Prices

Contractor: Optum Government Solutions, Inc.

Contract Month of Targeted Fully Operational Start Date: Phase 1 - 9/14/18; Phase 2 - 12/6/19; Phase 3 - 1/10/20

Phase	Payment Milestone No.	Milestone Name	Contract Month of Milestone	Fixed Price	3% Certificaton	7% Holdback	Payment	Deliverable(s) Integrated From Addendum 8	Schedule from Addendum 8
1	3	Approved Architecture Plan	9/1/2017					Hardware and Equipment Acquisition Plan	6 weeks after contract signed and each week thereafter until phase end
1	3	Approved Architecture Plan	9/1/2017					Software Acquisition and Installation Plan	6 weeks after contract signed and each week thereafter until phase end
1	3	Approved Architecture Plan	9/1/2017					Security Plan	12 weeks after contract signed and after any changes
1	3	Approved Architecture Plan	9/1/2017					Conversion Plan	8 weeks after contract signed
1	3	Approved Architecture Plan	9/1/2017					Release Management Plan	12 weeks after contract signed
1	4	Approved Quality Assurance/Test Management Plan	9/11/2017	\$ 1,204,244.75	\$ 36,127.34	\$ 84,297.13	\$ 1,083,820.28		
1	4	Approved Quality Assurance/Test Management Plan	9/11/2017					Quality Management Plan	16 weeks after contract signed and each week thereafter
1	4	Approved Quality Assurance/Test Management Plan	9/11/2017					Test Management Plan	10 weeks after contract signed
1	5	Approved EDWS Detailed System Design	12/8/2017	\$ 2,022,955.32	\$ 60,688.66	\$ 141,606.87	\$ 1,820,659.79	Detailed Specification Design DSD)	15 weeks after contract signed
1	6	Approved FADS/SURS DSD	12/8/2017	\$ 519,397.74	\$ 15,581.93	\$ 36,357.84	\$ 467,457.97		
1	7	Approved EDWS System Integration Test (SIT) Results	12/19/2017	\$ 763,005.27	\$ 22,890.16	\$ 53,410.37	\$ 686,704.74		
1	8	Approved EDWS UAT Results	1/30/2018	\$ 674,318.44	\$ 20,229.55	\$ 47,202.29	\$ 606,886.60		
1	9	Approved CMS 64	2/2/2018	\$ 666,001.60	\$ 19,980.05	\$ 46,620.11	\$ 599,401.44		
1	10	Approved MARS DSD	2/2/2018	\$ 99,718.60	\$ 2,991.56	\$ 6,980.30	\$ 89,746.74		
1	11	Approved Implementation and Transition Plan	2/9/2018	\$ 1,163,932.87	\$ 34,917.99	\$ 81,475.30	\$ 1,047,539.58	Implementation and Transition Plan	3 months before Implementation
1	12	Approved Training Plan	2/9/2018	\$ 1,163,932.87	\$ 34,917.99	\$ 81,475.30	\$ 1,047,539.58	Training Plan	4 months before Implementation
1	13	Approved FADS/SURS System Integration Test (SIT) Results	2/12/2018	\$ 259,698.87	\$ 7,790.97	\$ 18,178.92	\$ 233,728.98		
1	14	Approved FADS/SURS UAT Results	4/9/2018	\$ 259,698.87	\$ 7,790.97	\$ 18,178.92	\$ 233,728.98		
1	15	7% Holdback Release for Fiscal Year 2018	6/30/2018			\$ (1,111,407.41)	\$ 1,111,407.41		
1	16	Approved CMS 64 UAT Results	9/11/2018	\$ 333,000.80	\$ 9,990.02	\$ 23,310.06	\$ 299,700.72		
1	17	Approved MARS UAT Results	9/11/2018	\$ 49,859.30	\$ 1,495.78	\$ 3,490.15	\$ 44,873.37		
1	18	Phase 1 (Release 0, 1, 2, 4) Go Live	9/13/2018	\$ 2,890,770.19	\$ 86,723.11	\$ 202,353.91	\$ 2,601,693.17		
1	19	Approved CMS 64 System Integration Test (SIT) Results	9/13/2018	\$ 333,000.80	\$ 9,990.02	\$ 23,310.06	\$ 299,700.72		
1	20	Approved MARS System Integration Test (SIT) Results	9/14/2018	\$ 49,859.30	\$ 1,495.78	\$ 3,490.15	\$ 44,873.37		
2	21	Release 3 (PBMS) Complete	1/29/2019	\$ 578,301.25	\$ 17,349.04	\$ 40,481.09	\$ 520,471.12		
1	22	CMS Certification Phase 1 (3% Certification Holdback Release)	3/14/2019		\$ (603,361.23)	\$ -	\$ 603,361.23		
2	23	7% Holdback Release for Fiscal Year 2019	6/30/2019			\$ (296,435.42)	\$ 296,435.42		
2	24	Release 5 (Financial Complete)	11/22/2019	\$ 578,301.25		\$ 40,481.09	\$ 537,820.16		
2	25	Release 6 (Core Services) Complete	12/6/2019	\$ 578,301.25		\$ 40,481.09	\$ 537,820.16		
3	26	Phase 3 / Release 7 (Advanced Analytics and Data Sharing) Complete	1/10/2020	\$ 578,301.25		\$ 40,481.09	\$ 537,820.16		

Pricing Table A - Implementation Phase Prices

Contractor: Optum Government Solutions, Inc.

Contract Month of Targeted Fully Operational Start Date: Phase 1 - 9/14/18; Phase 2 - 12/6/19; Phase 3 - 1/10/20

Phase	Payment Milestone No.	Milestone Name	Contract Month of Milestone	Fixed Price	3% Certificaton	7% Holdback	Payment	Deliverable(s) Integrated From Addendum 8	Schedule from Addendum 8
3	27	7% Holdback Release for End of DDI	1/31/2020			\$ (121,443.27)	\$ 121,443.27		
Totals			Totals	\$ 21,846,944.23	\$ -	\$ -	\$ 21,846,944.23		

EXHIBIT C – ESCROW AGREEMENT



Effective Date	10/18/2017
Deposit Account Number	51016
*Effective Date and Deposit Account Number to be supplied by Iron Mountain only.	

Three-Party Escrow Service Agreement

1. Introduction

This Three Party Escrow Service Agreement (the "**Agreement**") is entered into by and between Optum Government Solutions, Inc. (the "**Depositor**"), and by the Commonwealth of Virginia (the "**Beneficiary**") and by Iron Mountain Intellectual Property Management, Inc. ("**Iron Mountain**"). Depositor, Beneficiary, and Iron Mountain may be referred to individually as a "**Party**" or collectively as the "**Parties**" throughout this Agreement.

- (a) The use of the term services in this Agreement shall refer to Iron Mountain services that facilitate the creation, management, and enforcement of software or other technology escrow accounts as described in Exhibit A attached to this Agreement ("**Services**"). A Party shall request Services under this Agreement by selecting such Service on Exhibit A upon execution of the Agreement or by submitting a work request for certain Iron Mountain Services ("**Work Request**") via written instruction or the online portal maintained at the website located at www.ironmountainconnect.com or other websites owned or controlled by Iron Mountain that are linked to that website (collectively the "**Iron Mountain Website**").
- (b) The Beneficiary and Depositor have, or will have, entered into a license agreement or other agreement ("**License Agreement**") conveying intellectual property rights to the Beneficiary, and the Parties intend this Agreement to be considered as supplementary to such agreement, pursuant to Title 11 United States [Bankruptcy] Code, Section 365(n).

2. Depositor Responsibilities and Representations

- (a) It shall be solely the Depositor's responsibility to: (i) make an initial deposit of all Work Product, as that term is defined in the License Agreement, and any available English language technical and/or user documentation that Depositor develops that describes such Work Product, if any ("**Deposit Material**") to Iron Mountain at the end of each six (6) month period during the term of the Agreement in which any such Deposit Material have been created and (ii) ensure that a minimum of one (1) copy of Deposit Material is deposited with Iron Mountain at all times. At the time of each deposit or update, Depositor will provide an accurate and complete description of all Deposit Material sent to Iron Mountain using the form attached to this Agreement as Exhibit B.
- (b) Depositor represents that it lawfully possesses all Deposit Material provided to Iron Mountain under this Agreement and that any current or future Deposit Material liens or encumbrances will not prohibit, limit, or alter the rights and obligations of Iron Mountain under this Agreement. Depositor warrants that with respect to the Deposit Material, Iron Mountain's proper administration of this Agreement will not violate the rights of any third parties.
- (c) Depositor represents that all Deposit Material is readable and useable in its then current form; if any portion of such Deposit Material is encrypted, the necessary decryption tools and keys to read such material are deposited contemporaneously.

3. Beneficiary Responsibilities and Representations

- (a) Beneficiary acknowledges that, as between Iron Mountain and Beneficiary, Iron Mountain's obligation is to maintain the Deposit Material as delivered by the Depositor and that, other than Iron Mountain's inspection of the Deposit Material (as described in Section 4) and the performance of any of the optional verification Services listed in Exhibit A, Iron Mountain has no other obligation regarding the completeness, accuracy, or functionality of the Deposit Material.

4. Iron Mountain Responsibilities and Representations

- (a) Iron Mountain agrees to use commercially reasonable efforts to provide the Services requested by Authorized Person(s) (as identified in the "**Authorized Person(s)/Notices Table**" below) representing the Depositor or Beneficiary in a Work Request. Iron Mountain may reject a Work Request (in whole or in part) that does not contain all required information at any time upon notification to the Party originating the Work Request.
- (b) Iron Mountain will conduct a visual inspection upon receipt of any Deposit Material and associated Exhibit B. If Iron Mountain determines that the Deposit Material does not match the description provided by Depositor represented in Exhibit B, Iron Mountain will notify Depositor of such discrepancy.
- (c) Iron Mountain will provide notice to the Beneficiary of all Deposit Material that is accepted and deposited into the escrow account under this Agreement. Iron Mountain shall not have any obligation to prompt the Depositor to make a deposit, nor shall it have an obligation to notify the Beneficiary of the Depositor's failure to make a deposit or deposit update.

Notwithstanding the foregoing, either Depositor or Beneficiary may obtain information regarding deposits or deposit updates upon request or through the Iron Mountain Website.

- (d) Iron Mountain will follow the provisions of Exhibit C attached to this Agreement in administering the release of Deposit Material.
- (e) Iron Mountain will hold and protect Deposit Material in physical or electronic vaults that are either owned or under the control of Iron Mountain, unless otherwise agreed to by the Parties.
- (f) Upon receipt of written instructions by both Depositor and Beneficiary, Iron Mountain will permit the replacement or removal of previously submitted Deposit Material. The Party making such request shall be responsible for getting the other Party to approve the joint instructions. Any Deposit Material that is removed from the deposit account will be either returned to Depositor or destroyed in accordance with Depositor's written instructions.
- (g) Should transport of Deposit Material be necessary for Iron Mountain to perform Services requested by Depositor or Beneficiary under this Agreement or following the termination of this Agreement, Iron Mountain will use a commercially recognized overnight carrier such as Federal Express or United Parcel Service. Iron Mountain will not be responsible for any loss or destruction of, or damage to, such Deposit Material while in the custody of the common carrier.

5. Deposit Material Verification

- (a) Depositor may submit a verification Work Request to Iron Mountain for only the File List Test Service defined in Exhibit A attached to this Agreement, and the Depositor consents to Iron Mountain's performance of the File List Test Service. As agreed to between the Depositor and Beneficiary, Beneficiary may cause Depositor to submit a verification Work Request for a File List Test, provided that Beneficiary does not cause Depositor to submit such Work Request more frequently than two (2) times during each twelve (12) month period during the term of the License Agreement. Upon request by Iron Mountain and in support of Depositor's request for verification Services, Depositor shall promptly complete and return an escrow deposit questionnaire and reasonably cooperate with Iron Mountain by providing reasonable access to its technical personnel whenever reasonably necessary.
- (b) The Parties consent to Iron Mountain's use of a subcontractor to perform verification Services. Such subcontractor shall be bound by the same confidentiality obligations as Iron Mountain and shall not be a direct competitor to either Depositor or Beneficiary. Iron Mountain shall be responsible for the delivery of Services of any such subcontractor as if Iron Mountain had performed the Services. Depositor warrants and Beneficiary warrants that any material it supplies for verification Services is lawful, does not violate the rights of any third parties and is provided with all rights necessary for Iron Mountain to perform verification of the Deposit Material.

6. Payment

The Party responsible for payment designated in the Paying Party Billing Contact Table ("Paying Party") shall pay to Iron Mountain all fees as set forth in the Work Request based upon the amounts set forth in Exhibit A during the Initial Term, subject to adjustment as described in the immediately following sentence for the fees payable during each Renewal Term ("Service Fees"). Iron Mountain may update the Service Fees during the term of this Agreement and shall provide the Paying Party with written notice of updated Service Fees that shall apply during the Renewal Term at least ninety (90) days prior to the beginning of the Renewal Term, where such Renewal Term Service Fees shall be no greater than five percent (5%) more than the Service Fees payable during the prior twelve (12) month period. If the Paying Party does not receive any written notice of new Service Fees at least ninety (90) days prior to the beginning of the next Renewal Term, the Service Fees in effect during the prior twelve (12) month period shall apply. All Service Fees are due within thirty (30) calendar days from the date of invoice in U.S. currency and are non-refundable. The Paying Party is liable for any taxes (other than Iron Mountain income taxes) related to Services purchased under this Agreement or shall present to Iron Mountain an exemption certificate acceptable to the taxing authorities. Applicable taxes shall be billed as a separate item on the invoice. Any Service Fees not collected by Iron Mountain when due shall bear interest until paid at a rate of one percent (1%) per month (12% per annum) or the maximum rate permitted by law, whichever is less. Notwithstanding the non-performance of any obligations of Depositor to deliver Deposit Material under the License Agreement or this Agreement, Iron Mountain is entitled to be paid all Service Fees that accrue during the Term of this Agreement.

7. Term and Termination

- (a) The term of this Agreement is for a period of one (1) year from the Effective Date ("Initial Term") and will automatically renew for additional one (1) year terms ("Renewal Term") (collectively the "Term"). This Agreement shall continue in full force and effect until one of the following events occur: (i) Depositor and Beneficiary provide Iron Mountain with sixty (60) days' prior written joint notice of their intent to terminate this Agreement; (ii) Beneficiary provides Iron Mountain and Depositor with sixty (60) days' prior written notice of its intent to terminate this Agreement; (iii) the Agreement terminates under another provision of this Agreement; (iv) Depositor provides Iron Mountain and the Beneficiary with sixty (60) days' notice of its intent to terminate this Agreement due to the License Agreement terminating or expiring; or (v) any time after the Initial Term, Iron Mountain provides sixty (60) days' prior written notice to the Depositor and Beneficiary of Iron Mountain's intent to terminate this Agreement. The Effective Date and the Deposit Account Number shall be supplied by Iron Mountain only. The Effective Date supplied by Iron Mountain and specified above shall be the

date Iron Mountain sets up the escrow account. If no Effective Date is provided above, then the Effective Date shall be the date of the last signature to this Agreement

- (b) Unless the express terms of this Agreement provide otherwise, upon termination of this Agreement, Iron Mountain shall return physical Deposit Material to the Depositor and erase electronically submitted Deposit Material. If reasonable attempts to return the physical Deposit Material to Depositor are unsuccessful, Iron Mountain shall destroy the Deposit Material.
- (c) In the event of the nonpayment of undisputed Service Fees owed to Iron Mountain, Iron Mountain shall provide all Parties to this Agreement with written notice of Iron Mountain's intent to terminate this Agreement. Any Party to this Agreement shall have the right to make the payment to Iron Mountain to cure the default. If the past due payment is not received in full by Iron Mountain within thirty (30) calendar days of the date of such written notice, then Iron Mountain shall have the right to terminate this Agreement at any time thereafter by sending written notice to all Parties. Iron Mountain shall have no obligation to perform the Services under this Agreement (except those obligations that survive termination of this Agreement, which includes the confidentiality obligations in Section 10) so long as any undisputed Service Fees due Iron Mountain under this Agreement remain unpaid.

8. Infringement Indemnification

Anything in this Agreement to the contrary notwithstanding, Depositor at its own expense shall defend, indemnify and hold Iron Mountain fully harmless against any claim or action asserted against Iron Mountain (specifically including costs and reasonable attorneys' fees associated with any such claim or action) to the extent such claim or action is based on an assertion that Iron Mountain's administration of this Agreement infringes any patent, copyright, license or other proprietary right of any third party. When Iron Mountain has notice of a claim or action, it shall promptly notify Depositor in writing. Depositor may elect to control the defense of such claim or action or enter into a settlement agreement, provided that no such settlement or defense shall include any admission or implication of wrongdoing on the part of Iron Mountain without Iron Mountain's prior written consent, which consent shall not be unreasonably delayed or withheld. Iron Mountain shall have the right to employ separate counsel and participate in the defense of any claim at its own expense.

9. Warranties

IRON MOUNTAIN WARRANTS ANY AND ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A COMMERCIALY REASONABLE MANNER CONSISTENT WITH INDUSTRY STANDARDS. EXCEPT AS SPECIFIED IN THIS SECTION, ALL CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. AN AGGRIEVED PARTY MUST NOTIFY IRON MOUNTAIN PROMPTLY UPON LEARNING OF ANY CLAIMED BREACH OF ANY WARRANTY AND, TO THE EXTENT ALLOWED BY APPLICABLE LAW, SUCH PARTY'S REMEDY FOR BREACH OF THIS WARRANTY SHALL BE SUBJECT TO THE LIMITATION OF LIABILITY AND CONSEQUENTIAL DAMAGES WAIVER IN THIS AGREEMENT. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE.

10. Confidential Information

Iron Mountain shall have the obligation to implement and maintain safeguards designed to protect the confidentiality of the Deposit Material and use at least the same degree of care to safeguard the confidentiality of the Deposit Material as it uses to protect its own confidential information, but in no event less than a reasonable degree of care. Except as provided in this Agreement Iron Mountain shall not use or disclose the Deposit Material. Iron Mountain shall not disclose the terms of this Agreement to any third party other than its financial, technical, or legal advisors, or its administrative support service providers. Any such third party shall be bound by the same confidentiality obligations as Iron Mountain. If Iron Mountain receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposit Material, Iron Mountain will promptly notify the Parties to this Agreement unless prohibited by law. After notifying the Parties, Iron Mountain may comply in good faith with such order or subpoena. It shall be the responsibility of Depositor or Beneficiary to challenge any such order or subpoena; provided, however, that Iron Mountain does not waive its rights to present its position with respect to any such order or subpoena. Iron Mountain will cooperate with the Depositor or Beneficiary, as applicable, to support efforts to quash or limit any order or subpoena, at such Party's expense.

11. Limitation of Liability

EXCEPT FOR: (I) LIABILITY FOR DEATH OR BODILY INJURY; (II) PROVEN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; OR (III) THE INFRINGEMENT INDEMNIFICATION OBLIGATIONS OF SECTION 8, ALL OTHER LIABILITY RELATED TO THIS AGREEMENT, IF ANY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, OF ANY PARTY TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT EQUAL TO ONE YEAR OF FEES PAID TO IRON MOUNTAIN UNDER THIS AGREEMENT. IF CLAIM OR LOSS IS MADE IN RELATION TO A SPECIFIC DEPOSIT OR DEPOSITS, SUCH LIABILITY SHALL BE LIMITED TO THE FEES RELATED SPECIFICALLY TO SUCH DEPOSITS.

12. Consequential Damages Waiver

IN NO EVENT SHALL ANY PARTY TO THIS AGREEMENT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS, ANY COSTS OR EXPENSES FOR THE PROCUREMENT OF SUBSTITUTE SERVICES

(EXCLUDING SUBSTITUTE ESCROW SERVICES), OR ANY OTHER INDIRECT DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EVEN IF THE POSSIBILITY THEREOF MAY BE KNOWN IN ADVANCE TO ONE OR MORE PARTIES.

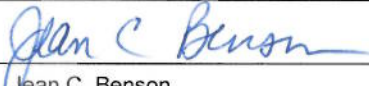
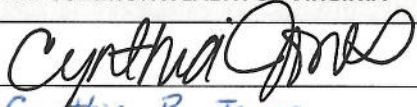
13. General


- (a) Purchase Orders. In the event that the Paying Party issues a purchase order or other instrument used to pay Service Fees to Iron Mountain, any terms and conditions set forth in the purchase order which constitute terms and conditions which are in addition to those set forth in this Agreement or which establish conflicting terms and conditions to those set forth in this Agreement are expressly rejected by Iron Mountain.
- (b) Right to Make Copies. Iron Mountain shall have the right to make copies of all Deposit Material as reasonably necessary to perform the Services. Iron Mountain shall copy all copyright, nondisclosure, and other proprietary notices and titles contained on Deposit Material onto any copies made by Iron Mountain. Any copying expenses incurred by Iron Mountain as a result of a Work Request to copy will be borne by the requesting Party. Iron Mountain may request Depositor's reasonable cooperation in promptly copying Deposit Material in order for Iron Mountain to perform this Agreement.
- (c) Choice of Law. The validity, interpretation, and performance of this Agreement shall be construed under the laws of the Commonwealth of Virginia, USA, without giving effect to the principles of conflicts of laws.
- (d) Authorized Person(s). Depositor and Beneficiary must each authorize and designate one person whose actions will legally bind such Party ("Authorized Person" who shall be identified in the Authorized Person(s) Notices Table of this Agreement or such Party's legal representative) and who may manage the Iron Mountain escrow account through the Iron Mountain website or written instruction. Depositor and Beneficiary warrant that they shall maintain the accuracy of the name and contact information of their respective designated Authorized Person during the Term of this Agreement by providing Iron Mountain with a written request to update its records for the Party's respective Authorized Person which includes the updated information and applicable deposit account number(s).
- (e) Right to Rely on Instructions. With respect to release of Deposit Material or the destruction of Deposit Material, Iron Mountain shall rely on instructions from a Party's Authorized Person. In all other cases, Iron Mountain may act in reliance upon any instruction, instrument, or signature reasonably believed by Iron Mountain to be genuine and from an Authorized Person, officer, or other employee of a Party. Iron Mountain may assume that such representative of a Party to this Agreement who gives any written notice, request, or instruction has the authority to do so. Iron Mountain will not be required to inquire into the truth of, or evaluate the merit of, any statement or representation contained in any notice or document reasonably believed to be from such representative.
- (f) Force Majeure. No Party shall be liable for any delay or failure in performance due to events outside the defaulting Party's reasonable control, including without limitation acts of God, strikes, riots, war, acts of terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the excused Party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay.
- (g) Notices. Iron Mountain shall have the right to rely on the last known address provided by each the Depositor and Beneficiary for its respective Authorized Person and Billing Contact as set forth in this Agreement or as subsequently provided as an update to such address. All notices regarding Exhibit C (Release of Deposit Material) shall be sent by commercial express mail or other commercially appropriate means that provide prompt delivery and require proof of delivery. All other correspondence, including but not limited to invoices and payments, may be sent electronically or by regular mail. The Parties shall have the right to rely on the last known address of the other Parties. Any correctly addressed notice to the last known address of the other Parties, that is refused, unclaimed, or undeliverable shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by electronic mail, the postal authorities, or commercial express mail.
- (h) No Waiver. No waiver of any right under this Agreement by any Party shall constitute a subsequent waiver of that or any other right under this Agreement.
- (i) Assignment. No assignment of this Agreement by Depositor or Beneficiary or any rights or obligations of Depositor or Beneficiary under this Agreement is permitted without the written consent of Iron Mountain, which shall not be unreasonably withheld or delayed. Iron Mountain shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor or Beneficiary unless Iron Mountain receives clear, authoritative and conclusive written evidence of the change of Parties.
- (j) Severability. In the event any of the terms of this Agreement become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, such term(s) shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect.
- (k) Independent Contractor Relationship. Depositor and Beneficiary understand, acknowledge, and agree that Iron Mountain's relationship with Depositor and Beneficiary will be that of an independent contractor and that nothing in this Agreement is intended to or should be construed to create a partnership, joint venture, or employment relationship.
- (l) Attorneys' Fees. Any costs and fees incurred by Iron Mountain in the performance of obligations imposed upon Iron Mountain solely by virtue of its role as escrow service provider including, without limitation, compliance with subpoenas,

court orders, discovery requests, and disputes arising solely between Depositor and Beneficiary, including, but not limited to, disputes concerning a release of the Deposit Material shall, unless adjudged otherwise, be paid by Depositor.


- (m) **No Agency.** No Party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other Parties or bind the other Parties in any respect whatsoever.
- (n) **Disputes.** Any dispute, difference or question arising among any of the Parties concerning the construction, meaning, effect or implementation of this Agreement or the rights or obligations of any Party will be submitted to, and settled by arbitration by a single arbitrator chosen by the corresponding Regional Office of the American Arbitration Association in accordance with the Commercial Rules of the American Arbitration Association. The Parties shall submit briefs of no more than 10 pages and the arbitration hearing shall be limited to two (2) days maximum. Arbitration will take place in Richmond, Virginia, USA. Any court having jurisdiction over the matter may enter judgment on the award of the arbitrator. Service of a petition to confirm the arbitration award may be made by regular mail or by commercial express mail, to the attorney for the Party or, if unrepresented, to the Party at the last known business address.
- (o) **Interpleader.** Anything to the contrary notwithstanding, in the event of any dispute regarding the interpretation of this Agreement, or the rights and obligations with respect to the Deposit Material in escrow or the propriety of any action contemplated by Iron Mountain hereunder, then Iron Mountain may, in its sole discretion, file an interpleader or similar action in any court of competent jurisdiction to resolve any such dispute.
- (p) **Regulations.** Depositor and Beneficiary are responsible for and warrant, to the extent of their individual actions or omissions, compliance with all applicable laws, rules and regulations, including but not limited to: customs laws; import; export and re-export laws; and government regulations of any country from or to which the Deposit Material may be delivered in accordance with the provisions of this Agreement. Depositor represents and warrants that the establishment of a deposit account containing ITAR regulated Deposit Material for the Beneficiary, and Iron Mountain's subsequent release of such Deposit Material under the terms of this Agreement will be lawful under any applicable U.S. export control regulations and laws, including ITAR. Conversely, Depositor shall refrain from establishing a deposit account containing ITAR regulated Deposit Material for the Beneficiary if the release of such Deposit Material to the Beneficiary, under the terms of this Agreement, would be in violation of any applicable U.S. export control regulations and laws, including ITAR. With respect to Deposit Material 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. Iron Mountain is responsible for and warrants, to the extent of their individual actions or omissions, compliance with all applicable laws, rules and regulations to the extent that it is directly regulated by the law, rule or regulation and to the extent that it knows or has been advised that, as a result of this Agreement, its activities are subject to the law, rule or regulation. 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 and/or Beneficiary will notify Iron Mountain and Iron Mountain will be relieved of its obligations hereunder unless and until such time as such activity is permitted.
- (q) **No Third Party Rights.** This Agreement is made solely for the benefit of the Parties to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement unless otherwise agreed to by all of the Parties.
- (r) **Entire Agreement.** The Parties agree that this Agreement, which includes all attached Exhibits and all valid Work Requests and SOWs submitted by the Parties, is the complete agreement between the Parties concerning the subject matter of this Agreement and replaces any prior or contemporaneous oral or written communications between the Parties. There are no conditions, understandings, agreements, representations, or warranties, expressed or implied, which are not specified in this Agreement. Each of the Parties warrant that the execution, delivery, and performance of this Agreement has been duly authorized and signed by a person who meets statutory or other binding approval to sign on behalf of its organization as named in this Agreement. This Agreement may be modified only by mutual written agreement of all the Parties.
- (s) **Counterparts.** This Agreement may be executed electronically in accordance with applicable law or in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
- (t) **Survival.** Sections 7 (Term and Termination), 8 (Infringement Indemnification), 9 (Warranties), 10 (Confidential Information), 11 (Limitation of Liability), 12 (Consequential Damages Waiver), and 13 (General) of this Agreement shall survive termination of this Agreement or any Exhibit attached to this Agreement.

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

DEPOSITOR: OPTUM GOVERNMENT SOLUTIONS, INC.		BENEFICIARY: THE COMMONWEALTH OF VIRGINIA	
Signature		Signature	
Print Name	Jean C. Benson	Print Name	Cynthia B. Jones
Title	SVP, Optum Corporate Finance	Title	Director
Date	October 10, 2017	Date	10/11/17

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.	
Signature	<small>DocuSigned by:</small> 
Print Name	John Trotti
Title	Sr. Manager, Contracts
Date	October 19, 2017 07:22 PDT

Approved as to IPM Operational Content:
Iron Mountain Operations



Name: John Styslinger, Contracts Specialist
Date: May 2, 2017

(BALANCE OF THIS PAGE LEFT INTENTIONALLY BLANK – NOTICES TABLES AND EXHIBITS FOLLOW)

Authorized Person Notices Table

Please provide the names and contact information of the Authorized Persons under this Agreement. Please complete all information as applicable. Incomplete information may result in a delay of processing.

DEPOSITOR (Required information)		BENEFICIARY (Required information)	
Print Name	James Lukenbill	Print Name	MUKUNDAN SRINIVASAN
Title	Virginia EDWS Project Manager	Title	IT Director
Email Address	James.Lukenbill@optum.com	Email Address	mukundan.srinivasan@dmv.virginia.gov
Street Address	1608 Sienna Dr	Street Address	600 E. Broad St.
City	Cedar Park	City	Richmond
State/Province	Texas	State/Province	VA
Postal/Zip Code	78613	Postal/Zip Code	23219
Country	U.S.	Country	USA
Phone Number	763 957-6314	Phone Number	804-371-6369
Fax Number	781 895-9951	Fax Number	804-371-4981

Paying Party Billing Contact Information Table (Required information)

Please provide the name and contact information of the Billing Contact for the Paying Party under this Agreement. All Invoices will be sent to this individual at the address set forth below. Incomplete information may result in a delay of processing.

Company Name	Optum Government Solutions, Inc.
Print Name	Steve Palm
Title	Finance Manager
Email Address	Steve.Palm@optum.com
Street Address	950 Winter Street, Suite 3800
City	Waltham
State/Province	Massachusetts
Postal/Zip Code	02451
Country	U.S.
Phone Number	781 419-8552
Fax Number	781 895-9951
Purchase Order #	

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.

All notices should be sent to jpmclientservices@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 A
Escrow Services Fee Schedule – Work Request

Deposit Account Number	51016
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Service	Service Description - Three-Party Escrow Service Agreement All services are listed below. Check the requested service and submit a Work Request to Iron Mountain for services requested after agreement signature.	One-Time/Per Service Fees	Annual Fees
<input checked="" type="checkbox"/> Setup Fee (Required at Setup)	One-time Setup Fee for Iron Mountain to setup a standard Three-Party Escrow Service Agreement.	\$2,575	
<input checked="" type="checkbox"/> Deposit Account Fee (Required at Setup)	Iron Mountain will set up one deposit account to manage and administrate access to Deposit Material to be secured in a controlled storage environment. Iron Mountain will provide account services that include unlimited deposits, electronic vaulting, access to Iron Mountain Connect™ Escrow Management Center for secure online account management, submission of electronic Work Requests, and communication of status. Release of deposit material is also included in the annual fee. An oversize fee of \$200 USD per 1.2 cubic foot will be charged for deposits that exceed 2.4 cubic feet.		\$1,150
<input checked="" type="checkbox"/> Beneficiary Fee (Required at Setup)	Iron Mountain will fulfill a Work Request to add a Beneficiary to an escrow deposit account and manage account access rights. Beneficiary will have access to Iron Mountain Connect™ Escrow Management Center for secure online account management, submission of electronic Work Requests, and communication of status.		\$850
<input type="checkbox"/> File List Test	Iron Mountain will perform one (1) File List Test, which includes a Deposit Material media readability analysis, a file listing, a file classification table, virus scan outputs, and confirmation of the presence or absence of a completed escrow deposit questionnaire. A final report will be sent to Depositor and Beneficiary regarding the Deposit Material. Deposit must be provided on CD, DVD-R, or deposited electronically.	\$2,250.00 for each File List Test requested during the Initial Term and the Price for each File List Test after the Initial Term shall be determined in accordance with Section 6). SERVICE MAY ONLY BE REQUESTED BY THE DEPOSITOR	N/A
<input type="checkbox"/> Dual Vaulting	Iron Mountain will store and manage a redundant copy of the Deposit Material in one (1) additional location. All Deposit Material (original and copy) must be provided by the Depositor.	N/A	\$750
<input type="checkbox"/> Remote Vaulting	Iron Mountain will store and manage the Deposit Material in a remote location, designated by the client, outside of Iron Mountain’s primary escrow vaulting location. All Deposit Material (original and copy) must be provided by the Depositor.	N/A	\$750
<input 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

Pursuant to the Agreement, the undersigned hereby issues this Work Request for performance of the Service(s) selected above.

Paying Party – For Future Work Request Use Only	
Paying Party Name	Optum Government Solutions, Inc.
Signature	
Print Name	
Title	
Date	

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.
 All Work Requests should be sent to 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 B

Deposit Material Description

(This document must accompany each submission of Deposit Material)

Company Name	Optum Government Solutions, Inc.	Deposit Account Number	51016
Deposit Name		Deposit Version	

(Deposit Name will appear in account history reports)

Deposit Media

(Please Label All Media with the Deposit Name Provided Above)

Media Type	Quantity	Media Type	Quantity
<input type="checkbox"/> CD-ROM / DVD		<input type="checkbox"/> USB Drive	
<input type="checkbox"/> DLT Tape		<input type="checkbox"/> Documentation	
<input type="checkbox"/> DAT Tape(4mm/8mm)		<input type="checkbox"/> Hard Drive / CPU	
<input type="checkbox"/> LTO Tape		<input type="checkbox"/> Circuit Board	
<input type="checkbox"/> Other (please describe):			

	Total Size of Transmission (specify in bytes)	# of Files	# of Folders
<input type="checkbox"/> Electronic Deposit			

Deposit Encryption

(Please check either "Yes" or "No" below and complete as appropriate)

Is the media or are any of the files encrypted? Yes or No

If yes, please include any passwords and decryption tools description below. Please also deposit all necessary encryption software with this deposit. Depositor at its option may submit passwords on a separate Exhibit B.

Encryption tool name	Version	
Hardware required		
Software required		
Other required information		

Deposit Certification (Please check the box below to certify and provide your contact information)

<input type="checkbox"/> I certify for Depositor that the above described Deposit Material has been transmitted electronically or sent via commercial express mail carrier to Iron Mountain at the address below.	<input type="checkbox"/> Iron Mountain has inspected and accepted the above described Deposit Material either electronically or physically. Iron Mountain will notify Depositor of any discrepancies.		
Print Name	Name		
Date	Date		
Email Address			
Telephone Number			

Note: If Depositor is physically sending Deposit Material to Iron Mountain, please label all media and mail all Deposit Material with the appropriate Exhibit B via commercial express carrier to the following address:

Iron Mountain Intellectual Property Management, Inc.
 Attn: Vault Administration
 2100 Norcross Parkway, Suite 150
 Norcross, GA 30071
 Telephone: 800-875-5669
 Facsimile: 770-239-9201

Exhibit C**Release of Deposit Material**

Deposit Account Number	51016
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Iron Mountain will use the following procedures to process any Beneficiary Work Request to release Deposit Material. All notices under this Exhibit C shall be sent pursuant to the terms of Section 13(g) Notices.

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"):

- (i) Depositor's failure to carry out its support and maintenance obligations imposed by the License Agreement for a period of sixty (60) days and the failure to cure such breach within the applicable cure period set forth in the License Agreement; or
- (ii) Failure of the Depositor to continue to do business in the ordinary course; or
- (iii) Depositor is subject to voluntary or involuntary bankruptcy.

2. Release Work Request.

A Beneficiary may submit a Work Request to Iron Mountain to release the Deposit Material covered under this Agreement. To the extent that the Deposit Material is subject to applicable U.S. export control regulations and laws, including ITAR, the Beneficiary Work Request to release the Deposit Material must include Beneficiary's certification that such release would be compliant with the applicable U.S. export control regulations and laws, including ITAR. Iron Mountain will send a written notice of this Beneficiary Work Request within five (5) business days to the Depositor's Authorized Person.

3. Contrary Instructions.

From the date Iron Mountain mails written notice of the Beneficiary Work Request to release Deposit Material covered under this Agreement, Depositor's Authorized Person shall have ten (10) business days to deliver to Iron Mountain contrary instructions. Contrary instructions shall mean the written representation by Depositor that a Release Condition has not occurred or has been cured ("Contrary Instructions"). Contrary Instructions shall be on company letterhead and signed by a Depositor Authorized Person. Upon receipt of Contrary Instructions, Iron Mountain shall promptly send a copy to Beneficiary's Authorized Person. Additionally, Iron Mountain shall notify both Depositor and Beneficiary Authorized Persons that there is a dispute to be resolved pursuant to the Disputes provisions of this Agreement. Iron Mountain will continue to store Deposit Material without release pending (i) instructions from Depositor to release the Deposit Material to Beneficiary; or (ii) dispute resolution pursuant to the Disputes provisions of this Agreement; or (iii) withdrawal of Contrary Instructions from Depositor's Authorized Person or legal representative; or (iv) receipt of an order from a court of competent jurisdiction. The existence of a Release Condition dispute shall not relieve the Paying Party from payment of applicable Service Fees.

4. Release of Deposit Material.

If Iron Mountain does not receive timely Contrary Instructions from a Depositor Authorized Person or receives written instructions directly from Depositor's Authorized Person to release a copy of the Deposit Material to the Beneficiary, Iron Mountain is authorized to release Deposit Material to the Beneficiary. Iron Mountain is entitled to receive any undisputed, unpaid Service Fees due Iron Mountain from the Parties before fulfilling the Work Request to release Deposit Material covered under this Agreement. Any Party may cure a default of payment of Service Fees.

5. Termination of Agreement Upon Release.

This Agreement will terminate upon the release of Deposit Material held by Iron Mountain.

6. Right to Use Following Release.

Beneficiary has the right under this Agreement to use the Deposit Material for the sole purpose of continuing the benefits afforded to Beneficiary by the License Agreement. Notwithstanding, the Beneficiary shall not have access to the Deposit Material unless there is a release of the Deposit Material in accordance with this Agreement. Beneficiary shall be obligated to maintain the confidentiality of the released Deposit Material.

EXHIBIT D – INTENTIONALLY OMITTED

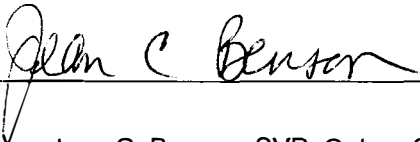
EXHIBIT E – CERTIFICATION REGARDING LOBBYING

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: Jean C. Benson, SVP, Optum Corporate Finance

Organization: Optum Government Solutions, Inc.

Date: October 10, 2017

EXHIBIT F – DMAS BUSINESS ASSOCIATE AGREEMENT (BAA)



COMMONWEALTH of VIRGINIA
Department of Medical Assistance Services

CYNTHIA B. JONES
DIRECTOR

SUITE 1300
600 EAST BROAD ST
RICHMOND, VA 23219

EXHIBIT F

BUSINESS ASSOCIATE AGREEMENT (BAA) to Contract #1 0039
PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION

General Conditions

This BAA (“Agreement” or “BAA”) is made as of October 11, 2017 by the Department of Medical Assistance Services (“DMAS” or “Covered Entity”), with offices at 600 East Broad Street, Richmond, Virginia, 23219, and Optum Government Solutions, Inc. (“Business Associate”), with an office at 11000 Optum Circle, Eden Prairie, Minnesota, 55344. 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@dmass.virginia.gov

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

Contact: Bhaskar Mukherjee
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 Health and Human Services.
 - 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 the effective date of termination.
- 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.

#####

End of Document

ATTACHMENT A

(To be completed by Business Associate)

DMAS/ Optum Government Solutions, Inc.
Master BAA Contract #10039 _____

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.

DMAS Contact: Bhaskar Mukherjee
Department of Medical Assistance Services
600 East Broad Street
Richmond, Virginia 23219
Contract Administrator Phone # (804) 774-2437 _____
Contract Administrator Email: Bhaskar.Mukherjee@dmas.virginia.gov

Contractor/Agency Contact:
Name: James Lukenbill
Address: 1608 Sienna Dr., Cedar Park Texas, 78613
Phone Number: (512) 569-0901
Email Address: James.Lukenbill@optum.com

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

Name	Role
Tom Kent	DBA/Technical Solution Manager
Sreekanth Donthabhaktuni.	Senior ETL Engineer
Jill Feagans	Security Specialist, solely as it relates to compliance or breach investigation activities
Shane Stoyer	Health Care Data Warehouse Specialist and Requirements Engineer
Tanika Jackson	Metadata Management Specialist
Moshumi Sinha	Report Developer and BI Specialist
Veera Obulareddy	Data Quality and Monitoring Tool Administrator
Arun Gangidi	Technical Production Support
Brian Watling	Data Architect/Data Modeler
Shirley McCloud	FADS Product Manager
Michael Norberg	FADS Analytics Developer
Leslie Michael	FADS Business Analyst
Waynewright Solomon	FADS Business Intelligence Developer
Damian Quattlebaum	FADS Business Intelligence Developer
Neha Bhattacharya	FADS Business Intelligence Developer
Shyam Biry	FADS Developer

Susan Cole	FADS Business Analyst
Kristy Stivers	FADS Business Analyst
LanLan Song	FADS Developer
David Roller	FADS Developer
Tina Stiggers	FADS Business Analyst
Kathy Barsom	MARS Product Manager
Kiran Panati	MARS Architect
Tara Dunham	MARS Subject Matter Expert (SME)
Melanie Friscic	MARS Business Analyst
Deborah Fair	MARS Business Analyst
Bhumika Patel	MARS Business Analyst
Sonny Dunaway	MARS ETL
Bishakha Dhar	MARS Business Analyst
Jane Bonichi	MARS Project Manager
Linda Grey	MARS Project Manager

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

Data Table
Provider Table
Claims History Tables (Including Header and Line Information)
Eligibility Tables

- d. Purposes for which such data is required.

The data is required to fulfill the scope of work requirements of Contract 10039

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

A description of how Business Associate intends to use, access or disclose data is defined in the contract documents.

**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, Escalation Procedures For Licensed Services

Attachment C, Additional DMAS Licensed Application Terms

Attachment D, AMA and Consortium Measures End User Agreement

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. 10039. This Exhibit ("Exhibit") sets forth additional terms and conditions under which Supplier shall provide such Licensed Services ("Licensed Services") to the Department of Medical Assistance Services ("DMAS"). All capitalized terms used but not defined herein shall have the meaning set forth in the Contract.

1. DEFINITIONS

A. Acceptance

Successful delivery of the Solution at the location(s) designated in the Contract, including completed and successful Acceptance testing in conformance with the Requirements and in accordance with Section 10 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, the Commonwealth of Virginia and its Agencies, 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.

D1. DMAS Licensed Applications

Any Application itemized in Schedule L of Supplier's Price Proposal that is part of Exhibit B attached hereto for which access and usage rights by DMAS are provided under this Exhibit G.

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.

E1. Other Applications

All Applications described in Exhibit A that are used solely by Supplier, and in all events are exclusive of any DMAS Licensed Applications. The provisions of this Exhibit that apply to Other Applications shall be limited to those that either use the defined term "Other Applications" or use the collective term "Applications" but not DMAS Licensed Applications.

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 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: SCALABILITY OF LICENSED SERVICES

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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 (or its subcontractors) and shall make the DMAS Licensed Application(s) available to DMAS designated Application Users through the Internet or for installation on applicable desktop computers, as applicable. 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, the Commonwealth, and its Application Users a non-exclusive, non-transferable, license to access and use via the Internet (for DMAS Licensed Software hosted by the Supplier) or on servers owned, operated, housed, and maintained by Supplier or on applicable desktop computers owned by the Commonwealth (for other DMAS Licensed Software) 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 but subject to the limitations of license type described in Exhibit B.

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, subject to the license rights and restrictions noted in Section 7(B) below.

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 DMAS Licensed Application(s), or the fact that such other agreement may be presented to DMAS or its Application Users at the time of accessing the DMAS Licensed 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. Notwithstanding the foregoing, if additional DMAS Licensed Applications from those set forth in Exhibit B are to be added to this Contract, the parties agree to negotiate mutually acceptable access terms as part of a Change Request to the extent the access terms in this Contract are not sufficient for the additional DMAS Licensed Application.

4. SUPPLIER RESPONSIBILITIES

A. Standard Application Responsibilities

Unless otherwise indicated in the requirements section of the Contract or its Exhibits, 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(s) will be made available to DMAS and its designated Application Users twenty-four (24) hours a day, seven (7) days a week for ninety-nine percent (99%) of the time, less Excusable Downtime measured on a calendar month basis commencing thirty (30) days following the commencement of the first Operations and Maintenance period ("Uptime" or "System Availability"). 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. See Attachment A.

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). Intentionally Left Blank

vii). If non-Excusable Downtime exceeds the parameters listed above in a given calendar month during the period described in (iv) above, DMAS shall have the right to require that Supplier will credit to DMAS the liquidated damage amount referenced in the column entitled "remedy" in Attachment A for EDWS-SLA-17 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 not outlined in the implementation timeline agreed to by both parties; its functionality; Content storage/ backup/disaster recovery, including physical location; security architecture, features or settings; terminations and/or replacement of any Supplier subcontractor to the extent Supplier receives such amount of advance notice from the 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. Changes to the solution services can only be implemented via an approved change order.

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 materially 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 to the extent expressly set forth elsewhere in this Contract or its Exhibits; (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.

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 applicable warranties set forth in 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.

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), and are performed in accordance with the terms of this Contract.

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). DMAS (on behalf of itself and all Application Users) shall immediately notify Supplier of any degradation, potential breach, or breach of the Content and Application privacy or security upon discovery. DMAS shall provide Supplier the opportunity to participate in the investigation of the reported situation.

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(s) 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(s) 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(s) 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(s) and/or Licensed Services support exporting of log files to the Commonwealth for review and analysis.
- vii). Supplier shall ensure that the Application(s) 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(s) 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(s) 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(s) 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(s) 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 a manner designed to minimize any impact or forfeiture 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. DMAS acknowledges and agrees, however, that in so far as the scope of any E-discovery, search and seizure or other actions by third parties is beyond Supplier's control, the foregoing obligation is not an unconditional guarantee that there shall be no impact or forfeiture.
- 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 documentation regarding incidents and investigations to DMAS for inclusion in the Commonwealth's incident handling system.
- xxiii). Supplier shall provide quarterly summary reports of Intrusion Detection System (IDS) and Intrusion Prevention System (IPS) events to: enterpriseservices@vita.virginia.gov
- xxiv). Supplier ensures that all Content is removed or destroyed in accordance with and/or exceeding the requirements of the Commonwealth Data Removal standard located at the following URL. <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, not to include the names of individuals within the 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. Supplier agrees that Supplier shall be obligated to require that any such third party institute appropriate controls with its employees to protect the Content being accessed.
- 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 store, process and maintain all Content within the continental United States at all times.
- xxxii). Supplier shall report the exact geographic location (City, State) of all Commonwealth data any time that Content is not stored in a Commonwealth facility, including backup and replicated data. 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 that an independent AICPA SOC-2 (Type 2) audit is performed at least once annually of the Application's environment commencing at the end of the first 12 months of Operations. Upon request from DMAS, Supplier shall provide a non-redacted copy of the current AICPA SOC-2 (Type 2) audit performed for this Contract with the knowledge that the report will be shared within DMAS and VITA, with DMAS' auditors, the Centers for Medicare and Medicaid Services, State and Federal auditors, and/or any such duly authorized representatives, whereby DMAS otherwise agrees to maintain the confidentiality of such audit Supplier must provide DMAS 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 shall have an independent third-party audit organization, at Supplier's sole cost and expense, perform a security audit (utilizing the Hosted Environment Information Security Standard [SEC525]) prior to the "go-live" date to determine control gaps between the Solution and the SEC525 framework. Supplier also understands that following Supplier's delivery to DMAS of the non-redacted copy of the security audit report, such report will be subject to review and approval by DMAS & Commonwealth Security. Approval shall be provided on a case-by-case basis and predicated upon whether any control gaps identified in the report for remediation have an associated remediation plan that DMAS determines to be reasonable, based upon the severity level of the control gap, the associated remediation plan, and facts and circumstances relevant to the case. Failure to complete the security audit may result in remedies being levied as provided in the terms and conditions of the Contract. DMAS reserves the right to conduct, at its sole cost and expense, a SEC525 audit or utilize an authorized third-party to conduct such an audit if DMAS deems such action necessary.
- 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 its 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). 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>, provided, however, that such time period shall be observed where the permitted destruction method is physical but if the removal method is electronic, Supplier and DMAS shall mutually agree upon a timeframe based on the volume of Content subject to the electronic removal process. 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.

xliii). Supplier shall provide regular training for Supplier personnel regarding the security and data recovery programs referenced in this Section.

xliv). Supplier shall perform regular testing of the systems and procedures outlined in this Section; and

xlv). Supplier shall use audit controls that record and monitor Application and Licensed Services activity continuously.

xlvi). Should Supplier fail to perform in compliance with any provision of this Section, DMAS may provide Supplier with a written notice to cure. Supplier shall have an opportunity to cure its noncompliance, or with agreement from DMAS and VITA, in its governance role, may request a reasonable extension for time to cure providing DMAS, and a copy to VITA at:

enterpriseservices@vita.virginia.gov, with a written plan of action to cure. The time period for curing the breach shall be appropriate to the complexity and severity of the matter and generally shall not be less than the timeframes stated in the Contract. If Supplier fails to cure, DMAS may deem Supplier in breach and/or default of the Contract and may immediately terminate the Contract, in whole or in part. Upon such termination, neither the Commonwealth, nor DMAS, nor VITA shall have any future liability except DMAS will be responsible for deliverables accepted by DMAS and Licensed Services rendered to DMAS by Supplier. In the event of such termination, Supplier shall accept return of any deliverable that was not accepted by DMAS, and Supplier shall refund any

monies paid by DMAS for such deliverable and for any unused, remaining term paid for in advance by DMAS for the Licensed Services up to the date of such termination. Supplier agrees that DMAS may pursue all remedies provided under law in the event of a breach or threatened breach of this Section, including reprocurement or transition costs or injunctive or other equitable relief, subject to any applicable limitations set forth in Section 21(B) of the Contract.

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, the following requirements and license restrictions shall apply to the DMAS Licensed Applications:

- 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 DMAS Licensed Application;
- iii). DMAS shall not directly or indirectly copy or reproduce all or any part of the DMAS Licensed 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 DMAS Licensed Application output generated from the relevant DMAS's Content, and an Application User may reproduce and distribute any DMAS Licensed Application output generated pursuant to the permissions set forth in this Contract;
- iv). DMAS shall not rent, lease, sublicense, resell for profit, loan, distribute, network or modify the DMAS Licensed Applications or Supplier Products or any component thereof, provided as part of the Licensed Services, except as otherwise authorized by Supplier. However, DMAS may reproduce and distribute any DMAS Licensed Application output (e.g., reports) generated by DMAS using the DMAS Licensed Application, and an Application User may reproduce and distribute any reports or output generated by the Application User using the DMAS Licensed Application and pursuant to the permissions in this Contract;
- v). DMAS shall only use the DMAS Licensed 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 DMAS Licensed 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 DMAS Licensed 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 DMAS Licensed 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 DMAS Licensed Application or Licensed Services for any illegal, obscene, offensive or immoral purpose.

x) DMAS shall further be subject to the additional terms for the applicable DMAS Licensed Applications set forth in Attachment C to this Exhibit G during the term of the Contract (the "Additional DMAS Licensed Application Terms").

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") in writing detailing what shall occur upon termination or expiration of the Contract (see Contract Sections 3.H and 17). The Transition Plan will detail each party's respective tasks for the orderly transition and migration of all Content & Work Product stored by Supplier/Supplier's Escrow Agent pursuant to the Contract to DMAS archive and/or to a system or application maintained by DMAS or a third party application service provider.

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 provide such assistance as stated below. 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 subject to the limitation set forth in Section 21(B) of this Contract.

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, pursuant to the *Code of Virginia* §2.2-4309 (B). 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 and implementation timeline. 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 based upon the mutually agreed upon acceptance criteria. DMAS agrees to complete Acceptance testing within a mutually agreed upon number of days after receiving written notice from Supplier of the ability of DMAS and its Application Users to access the Application that is set forth in the mutually agreed upon Master Work Plan. 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 based upon the mutually agreed upon acceptance criteria. 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 five (5) business 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 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 Section 12 and the applicable service level agreements referenced in Attachment A. 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

During the Operations and Maintenance phase of this Contract, Supplier shall provide the following Application Services (including telephonic support and all necessary travel and labor) without additional charge to DMAS over and above the pricing in Exhibit B 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

Supplier shall provide to DMAS all reasonably necessary telephone or written consultation requested by DMAS in connection with use, problems and operation of the Solution consistent with the portion of Supplier's Technical Proposal addressing Hours of Operation Requirements and Requirement EDWS –SR-POST-011. The Supplier will provide end user telephone consultation and email support (the "Help Desk Support") during the hours of 6:00AM-:800PM (Eastern Time), Monday through Friday excluding official Commonwealth of Virginia closed holidays (the "Help Desk Hours"). Additional Help Desk support outside of the Help Desk Hours can be arranged in

advance to support DMAS during anticipated high-need periods. Critical issue system support, defined as handling any critical system availability issues, will be provided on a 24X7X365 basis by the Supplier.

B. Service Levels

After a request from DMAS or VITA, in its governance role, Supplier will respond to Defects with the Solution identified by DMAS in no more than one (1) hour after notification during the portion of Supplier's Technical Proposal addressing Hours of Operations Requirements. Supplier will resolve all Defects according to the Severity Level corresponding to the applicable Defect in accordance with EDWS-SLA-08.

Resolution would occur if Supplier is able to provide a permanent or temporary fix or workaround, provided that if a temporary fix or workaround is provided, it must meet the conditions set forth in the immediately following sentences. First, the temporary fix or workaround shall be in place only for the period of time either initially proposed by Supplier to DMAS or as may be subsequently extended by written notification to DMAS while Supplier continues to use reasonable efforts to develop a more permanent resolution. Second, upon Supplier meeting the SLA by providing the temporary fix or workaround within the specified SLA Timelines for EDWS-SLA-08, DMAS shall notify Supplier whether the application of such temporary fix or workaround shall result in DMAS incurring additional cost with specific supporting detail, but no liquidated damage will be incurred by the Supplier. Third, if Supplier provides a temporary fix or workaround outside of the specified SLA Timeframe, Supplier shall pay the liquidated damage specified for the failure to meet the SLA until such time as a Resolution is provided. If DMAS notifies Supplier that DMAS will incur additional cost, Supplier shall (1) alter such temporary fix or workaround so that DMAS does not incur such additional cost, or (2) reimburse DMAS for DMAS' actual additional costs incurred above and beyond the amount of liquidated damage assessed until such time as a permanent resolution is provided.

Supplier and DMAS shall mutually agree upon the definitions and severity levels that shall be subject to the Service Level Agreement EDWS-SLA-08 found in Exhibit G, Attachment A via approval of the Supplier's "Quality Management Plan" and "Risk and Issues Management Plan," which include the escalation management plan during the DDI Phase. The level of severity (e.g. 1, 2, 3, and 4) applied to a specific Defect shall be based upon apply the facts to such definitions.

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 commencing thirty (30) days following the completion of the applicable Design, Development and Implementation ("DDI") phase for the Licensed Services whose availability is being measured, excluding scheduled maintenance or excusable downtime, where Supplier failed to meet the Requirements, 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 in a manner that meets the Requirements for the Application and Supplier Product.

In the event Supplier fails to meet all applicable SLAs 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.

Service Level Agreements are set forth in Attachment A to this Exhibit G.

B. Provisioning

Additions, moves, or changes to the Licensed Services (e.g., USERIDs), shall be provisioned within one (1) business hour of receiving a valid SAML authentication and attribute assertion from DMAS's identity provider.

C. Reporting

Once each calendar month during the term of this Contract commencing thirty (30) days following the completion of the applicable Design, Development and Implementation ("DDI") phase for the Licensed Services whose availability is being measured, 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 to VITA at: 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. 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 be assessed the liquidated damages stated in Attachment A to this Exhibit G and will: (i) promptly replace the Application with an Application that conforms to this Contract and such specifications; or (ii) repair the Application, at Supplier's expense, so that it conforms to this Contract and such specifications. If Supplier fails to meet the same Service Level for at least three (3) consecutive, successive months, then DMAS shall have the right to terminate this Contract for an uncured breach per Section 3.C of the Contract, and seek to recover its actual damages, up to the limitation of remedies set forth in Section 21(B) of the Contract. The foregoing provision does not apply to EDWS-SLA-16.

E. Escalation Procedures

Supplier shall provide a Performance Reporting Plan and Status Summary to DMAS that shall track Supplier's performance against its applicable Service Level Commitments and resolution of Corrective Action Plans at the frequency and with the content set forth in Supplier's Technical Proposal. The content of Supplier's Performance Reporting Plan and Status Summary shall be one of the mutually agreed upon DDI implementation documents.

13. 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 Work Product developed under this Contract for DMAS in a (re)useable format and any available English language technical and/or user documentation, if any (the

"Escrowed Materials") 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 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 Escrowed Materials for the Application software and all future releases,
- ii). all Documentation must be provided in unprotected MS Word and other commonly used formats that can be updated.

Supplier warrants that all Escrowed Materials shall be deposited in escrow for DMAS on a rolling semi-annual basis, such that updates or modifications to Escrowed Materials already deposited are added to prior deposits of the Escrowed Materials with that frequency. All Escrowed Material deposits 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 the following:

- 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.
- ii). 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 the Escrowed Materials 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 during the entirety of the term of the Contract.

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. Further, 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, to the best of Supplier's knowledge, the Licensed Services shall not infringe any third party U.S. proprietary rights including (without limitation) any U.S. trademark, trade name, trade secret, copyright, moral rights, patents or similar intellectual property rights when the Licensed Services are used in accordance with the terms of this Contract.

ii). Supplier warrants that the Application 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 selected by Supplier, or on applicable desktop computers owned by the Commonwealth (for other DMAS Licensed Software) in accordance with the documentation and all of the terms and conditions hereof.

iv). The Application provided hereunder is at the current or immediately preceding 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 selected by Supplier, or on applicable desktop computers owned by the Commonwealth (for other DMAS Licensed Software) 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 reasonably skilled in the industry 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. Notwithstanding the foregoing, Supplier shall have the right to disable passwords, keys or tokens in the event Supplier discovers a potential security vulnerability and/or Breach or potential Breach of privacy as defined under HIPAA if and to the extent necessary to protect Content and/or otherwise mitigate damages arising from such security vulnerability and/or Breach or potential Breach of privacy as defined under HIPAA. In such an event, Supplier shall notify DMAS in accordance with the notification timelines set forth in this Contract. Supplier further warrants that the Application and Licensed Services are compatible with and will operate successfully on the equipment selected by Supplier or on applicable desktop computers owned by the Commonwealth (for other DMAS Licensed Software).

E. Remedies

If any of the above warranties are breached as a result of Supplier's acts or omissions, Supplier shall use reasonable efforts to take actions required to remedy the breach and provide the Application and Licensed Services. If Supplier is unable to do so within a period not to exceed sixty (60) days from the date Supplier receives DMAS' written notice specifying the warranty that Supplier has breached, unless otherwise extended by DMAS, any liability incurred by Supplier for a breach of warranty shall be in accordance with Section 8.K of this Contract.

16. ACCEPTABLE USE POLICY

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**ATTACHMENT A
TABLE OF SERVICE LEVELS AND REMEDIES FOR LICENSED SERVICES**

Commencing thirty (30) days following the commencement of Operations and Maintenance for the Application and/or Licensed Service subject to a service level agreement and continuing for the remainder of the Term of the Contract, Supplier and DMAS have agreed upon the following service level agreements ("SLAs"), as described and measured below, along with the associated liquidated damage amount (i.e., "Remedy") to which DMAS would be entitled if and to the extent Supplier or the Supplier's Solution is at fault for the failure to meet the applicable SLA.

In addition, the following general principles shall apply to the liquidated damages arising out of the SLAs noted below in addition to the concepts captured in the "Notes" section for each SLA, if any:

If and to the extent a single event for which Supplier is responsible causes more than one SLA not to have been met, DMAS shall be entitled to recover the remedy corresponding to the highest amount available rather than multiple remedies for the same event. Reoccurrence of the same event multiple times may be treated separately.

<u>ID</u>	<u>Description</u>	<u>Measurement</u>	<u>Remedy</u>
EDWS-SLA-01	Potential velocity – 24 hours from entry to data mart usage Data warehouse velocity refers to the speed at which data moves through the business intelligence/data warehouse environment, from the initial entry into the operational environment, through (extract, transform and load) and into the data warehouse, and finally to the data mart environment.	< 24 hours from transformation, cleansing, aggregations, and load to EDW	1% of annual contract value If > 26 hours additional .5%/hour of annual contract value

Notes: Supplier shall not be liable for any failure to meet this SLA if the Supplier's inability to appropriately load the data is due to the quality of the data received into the business intelligence/data warehouse environment.

EDWS-SLA-02	The response time and performance must not exceed specified time frame based on the category of the service. Response time – 95% of all queries will be executed in less than 1 minute.	Contractor measurement for on-line response time and agreed upon by the Department.	Category 1: > 5% of queries executed > 1 minute 1% of monthly contract value Category 2: >5% of queries executed > 5 minutes Additional .5% of monthly contract value
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Category 3:
 > 5% of queries
 executed
 > 10 minutes
 Additional .5% of
 monthly contract value

Notes: Supplier and DMAS shall mutually agree upon the queries that shall be subject to the above SLA during the DDI phase of the Contract.

EDWS-SLA-03	Must pass the Department's quality audits.	Published	Any audit remedies incurred by the State
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EDWS-SLA-04	The System reports must be kept online for 2 years.	Reports defined and mutually agreed upon during requirements.	1% of monthly contract value
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EDWS-SLA-05	The Log data must be kept online for 90 days.	Logs defined and mutually agreed upon during requirements.	1% of monthly contract value
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EDWS-SLA-06	The Log data must be kept in the archive for 3 years.	Logs defined and mutually agreed upon during requirements.	1% of monthly contract value
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EDWS-SLA-07	The archive log data must be provided within 3 business days from date of the request.	Logs defined and mutually agreed upon during requirements.	1% of monthly contract value
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EDWS-SLA-08	Prioritize all issues into severity levels as defined by DMAS and resolve them according to the established timeframes for the production system with the defined metrics.	Severity Level One (1) Defects within 60 minutes Severity Level Two (2) Defects within 4 hours Severity Level Three (3) Defects – within 8 hours Severity Level Four (4) or higher – within an agreed upon schedule between the Contractor(s) and the Department after the defect was identified.	1% of Monthly contract value/minute > 59 mins 1% of Monthly contract value/minute > 3 hrs. 59 mins 1% of Monthly contract value /minute > 7 hrs. 59 minutes 1% of Monthly contract value /minute > agreed upon schedule
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Notes: Supplier and DMAS shall mutually agree upon the definitions and severity levels that shall be subject to the above SLA during the DDI phase of the Contract, in accordance with the provisions contained in Section 11.B of this Exhibit G.

EDWS-SLA-09	On the occurrence of a disaster, the Contractor will restore essential services irrespective of the time the incident occurred	< 120 clock minutes	2% of annual contract value
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Notes: For purposes of this SLA, "essential services are those services which are an integral part of operations at DMAS and that any service that may be deemed mandatory for future workflow will be considered essential services. DMAS and Supplier shall agree upon a list of services that are an "integral part of operations" and those "deemed mandatory for future workflow" during the DDI phase of this Contract.

EDWS-SLA-10	Recovery Time Objective (RTO) On the occurrence of a disaster, the Contractor will restore full services irrespective of the time the incident occurred	Full services not restored > two (2) calendar weeks from date and time of incident	2% of monthly contract value
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Notes: During the DDI phase of this Contract, Supplier and DMAS will mutually agree upon the definition of what it means for Supplier to "restore full services" under this Recovery Time Objective.

EDWS-SLA-11	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 annual contract value
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Notes: The mutually agreed upon Disaster Recovery (DR) Plan and Business Continuity Plan shall define both the criteria by which passage of the annual test would be measured and the nature of the tests to be performed.

EDWS-SLA-12	Website response times Website response time is measured at the Contractor's router	Website response times must be < two seconds ninety-nine percent (99%) of the time	1% of monthly contract value
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Notes: During the DDI phase of this Contract, Supplier and DMAS will mutually agree upon the definition of response time and the process for measuring and reporting on the website response time.

EDWS-SLA-13	Sampling of key performance metrics	> every 60 seconds	1% of monthly contract value
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Notes: During the DDI phase of this Contract, Supplier and DMAS will mutually agree upon the key performance metrics that would be sampled as part of this SLA.

EDWS-SLA-14	Online dashboard /services for the real-time and historical operational performance metrics	< 99% availability (except for the scheduled maintenance window)	2% of monthly contract value
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Notes: During the DDI phase of this Contract, Supplier and DMAS will mutually agree upon the content to be included in the dashboard/services required to meet this SLA.

EDWS-SLA-15	Automated monitoring alerts	> 60 seconds	1% of monthly contract value
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Notes: During the DDI phase of this Contract, Supplier and DMAS will mutually agree upon the alerts to be monitored.

EDWS-SLA-16	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.	The Contractor will assume all liabilities including any incurred cost to the Department 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.	Incurred costs
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EDWS-SLA-17	EDWS availability Scheduled maintenance shall not prevent transactions getting processed (High availability).	< twenty-four (24) hours per day, seven (7) days per week	1% of monthly contract value
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Notes: See Section 12 of this Document.

EDWS-SLA-18	Availability of the test regions during scheduled times	< 99.9%	1% of monthly contract value
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Notes: See Section 12 of this Document.

ATTACHMENT B

ESCALATION PROCEDURES FOR LICENSED SERVICES

Supplier shall provide three (3) levels of support as part of its Licensed Services during the Operations and Maintenance period of this Contract, where each level is designed to bring the appropriate resources to bear on diagnosing and resolving reported Defects in a manner consistent with the applicable SLAs that form an integral part of Attachment B to this Contract. Level 1 support obtains information required in order to confirm that the problem or issue reported is in fact a Defect with the Solution for which Supplier is responsible. DMAS shall provide Supplier with sufficient information in order for Supplier to perform this level of support. Upon Supplier's confirmation that the problem or issue reported is in fact a Defect, Supplier shall escalate the issue to appropriate Level 2 resources. The Level 2 resources have availability to a variety of tools, systems, instrumentation and operational discipline to proactively triage and initiate restoration of identified service impacts and resolve Defects with known problem fixes, workarounds or other means short of requiring Level 3 support. If Level 2 resources are not able to resolve the reported Defect, the issue will be escalated to Level 3 support resources who have access to and provide engineering level support and other, higher level support in an effort to resolve the reported Defect consistent with the terms of this Contract, including applicable SLAs.

Additional escalation procedures will be documented during the DDI Phase via the Supplier's "Quality Management Plan" and "Risk and Issues Management Plan."

ATTACHMENT C
ADDITIONAL DMAS LICENSED APPLICATION TERMS

With respect to the following DMAS Licensed Application Terms that may be used by DMAS during the Term of the Contract as part of the Licensed Services, the following additional terms shall apply to such usage for the noted DMAS Licensed Application:

A. Additional DMAS Licensed Application Terms for the Symmetry Software Described in Exhibit A:

1. **Grouping Claims.** DMAS may use the Symmetry Software at the sites referenced in Supplier's Proposal for the purpose of grouping of claims for which DMAS is the payer or third party administrator (TPA) (unless otherwise permitted below) and using any Symmetry Software output (i.e., data values) for the internal business activities of DMAS or TPA customers, including use of the output for the purposes of medical cost containment and treatment analysis, and provider network analyses and management.

2. **Value Added Reports.** DMAS may use the Symmetry Software to create Value Added Reports. "Value Added Reports" means DMAS' written analysis and interpretation of the results generated by processing any of DMAS' own claims or any one group's claims through the Symmetry Software, where such reports contain data values which are output from Symmetry Software. Value Added Reports may be in the form of reports, queries or analysis, paper or electronic, and solely for the Symmetry Software, may include the grouped data and identifiers generated by the Symmetry Software.

3. **Restrictions:** DMAS shall only have the right to further manipulate, use or disclose the Symmetry Software output (i.e., data values) or the Value Added Reports for the internal business purposes of the Commonwealth and not for resale.

4. The Supplier's EBM Connect Software described in the Proposal contains measures that are owned by the American Medical Association ("AMA") and/or the Physician Consortium for Performance Improvement (the "Consortium"). "Measure" shall mean the consortium measures and documentation posted on the Consortium's website, which includes the AMA's copyright notice, including Measure definitions, numerator and denominator statements, inclusions/exclusions, clinical and technical specifications and algorithms necessary to construct each Measure from health care data and to report measure results. Measures do not include any computer object, application or any type of programming or relational data tables. DMAS agrees to the terms of the AMA and Consortium Measures End User Agreement attached to this Exhibit as Attachment D.

ATTACHMENT D

AMA AND CONSORTIUM MEASURES END USER AGREEMENT

1. Grant of Rights and License Restrictions

- a. The right to use the Measures in the Supplier's EBM Connect Software is non-transferable, non-exclusive, and for the sole purpose of internal use by DMAS of physician performance measures within the United States and its territories.
- b. For purposes of this Attachment D, physician performance measures shall mean and include only the Consortium measures and related documentation posted on the Web site (www.physicianconsortium.org) ("AMA Web site") that includes the AMA's copyright notice, including measure definitions, numerator and denominator statements, inclusions/exclusions, clinical and technical specifications and algorithms necessary to construct each measure from health care data and to report measure results ("Measures"). Measures as defined and licensed hereunder do not include any computer object, application or any type of programming or relational data tables.
- c. DMAS shall not modify the Measures except to customize the Measures for use within DMAS' practice (but in no event will the content of the Measures be altered), removing any copyright, trademark, and attribution notices and disclaimers, creating derivative works (other than to customize the Measures for use within DMAS' practice), removing copyright, trademark and selling or licensing Measures or otherwise making the Measures or any portion thereof available to any unauthorized party.
- d. Updated versions of the Measures are available at www.physicianconsortium.org, or that Supplier will provide updated versions of the Measures in the next release of its EBM Connect Software if commercially feasible.
- e. DMAS should ensure that anyone who has authorized access to the EBM Connect Software, including the Measures complies with the provisions of this agreement and with all applicable laws in the use of the EBM Connect Software and the Measures, including but not limited to the Health Insurance Portability and Accountability Act.

2. Notices

- a. The Measures have been developed by the Consortium and copyrighted by the AMA as the convener and member of the Consortium.
- b. Limited proprietary coding is contained in the Measures data specifications for convenience. This license does not grant any rights to these proprietary code sets. DMAS agrees to obtain all legally necessary licenses for use of such proprietary coding from the owners of these code sets including a separate license from the AMA for use of Current Procedural Terminology (CPT®). CPT contained in the Measures data specifications is copyrighted by the AMA.

3. Miscellaneous

- a. DMAS ACKNOWLEDGES THAT MEASURES DEVELOPED BY THE CONSORTIUM ARE INTENDED TO FACILITATE QUALITY IMPROVEMENT ACTIVITIES BY PHYSICIANS. THESE MEASURES ARE NOT CLINICAL GUIDELINES, DO NOT ESTABLISH A STANDARD OF MEDICAL CARE, AND HAVE NOT BEEN TESTED FOR ALL POTENTIAL APPLICATIONS.
- b. THE AMA, THE CONSORTIUM AND ITS MEMBERS SHALL NOT BE RESPONSIBLE FOR ANY USE OF ANY MEASURES. THE MEASURES ARE LICENSED "AS IS" WITHOUT WARRANTY OF ANY KIND EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE AMA, THE CONSORTIUM AND THE CONSORTIUM'S MEMBERS DISCLAIM LIABILITY FOR ANY CONSEQUENCES ATTRIBUTABLE TO OR RELATED TO ANY USES, NON-USE OR INTERPRETATION OF INFORMATION CONTAINED IN OR NOT CONTAINED IN THE MEASURES, AND FOR USE OR ACCURACY OF ANY CPT OR OTHER CODING CONTAINED IN MEASURES SPECIFICATIONS. THE DEVELOPMENT AND

DISTRIBUTION OF THE MEASURES DOES NOT CONSTITUTE THE PRACTICE OF MEDICINE BY THE AMA, THE CONSORTIUM OR BY ANY OF THE CONSORTIUM'S MEMBERS. IN NO EVENT WILL THE AMA, THE CONSORTIUM OR THE CONSORTIUM'S MEMBERS BE LIABLE TO DMAS OR TO ANY OTHER PARTY FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS, LOST SAVINGS OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE SUCH MEASURES EVEN IF THE AMA, THE CONSORTIUM OR THE CONSORTIUM'S MEMBERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- c. THE AMA, THE CONSORTIUM AND THE CONSORTIUM'S MEMBERS DO NOT WARRANT THAT THE MEASURES WILL MEET END USER'S REQUIREMENTS OR THAT THE OPERATION OF THE MEASURES WILL BE UNINTERRUPTED OR WITHOUT ERROR. END USER ACKNOWLEDGES THAT THE MEASURES HAVE NOT BEEN DEVELOPED ACCORDING TO END USER'S SPECIFICATIONS OR ARE OTHERWISE CUSTOM-MADE. THE AMA, THE CONSORTIUM AND EACH OF ITS MEMBER'S ENTIRE LIABILITY AND END USER'S EXCLUSIVE REMEDY SHALL BE FOR THE AMA TO PROVIDE END USER WITH COMPLETE COPIES OF MEASURES AS ADOPTED BY THE CONSORTIUM VIA THE AMA'S WEB SITE.
- d. DMAS acknowledges that Supplier may not provide DMAS with new or updated Measures in the event of the termination or expiration of the agreement between Supplier and the AMA (on behalf of the Consortium). DMAS may continue to use Measures incorporated into its system prior to such termination or expiration of that agreement and obtain updated Measures from the AMA Web site;
- e. In the event a provision is determined to violate any law or is unenforceable, the remainder of this Attachment D shall remain in full force and effect;
- f. The AMA is a third party beneficiary for purposes of enforcing its rights under this Attachment D.