



COMMONWEALTH of VIRGINIA  
*Department of Medical Assistance Services*

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July 10, 2018

**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: Jennifer S. Lee, M.D.   
Director, Virginia Department of Medical Assistance Services

SUBJECT: Report on the Replacement of the Medicaid Management Information System – Contract  
Awarded to DXC Technology Services, LLC

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 June 11, 2018, the Department of Medical Assistance Services awarded the Medicaid Enterprise System Provider Services Solution Contract to DXC Technology Services, LLC. 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.

JSL/

Enclosure

pc: The Honorable Daniel Carey, MD, Secretary of Health and Human Resources



# **Provider Services Solution Contract**

between

The Department of Medical Assistance Services

and

**DXC Technology Services, LLC**

**PROVIDER SERVICES SOLUTION CONTRACT  
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## INFORMATION TECHNOLOGY SOLUTION CONTRACT

THIS Provider Services 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 DXC Technology Services LLC ("Supplier"), a limited liability company headquartered at 1775 Tysons Boulevard, Suite 900, Tysons, Virginia 22102, to be effective as of June 11, 2018 ("Effective Date").

### 1. PURPOSE AND SCOPE

This Contract sets forth the terms and conditions under which Supplier agrees to provide and implement for DMAS a Provider Services Solution (PRSS) 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 Acceptance testing in conformance with Section 10 and the Requirements.

#### B. Agent

Any third party independent agent of DMAS.

#### C. Business Day/Hour

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

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

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

#### E. Component

Software or Deliverable delivered by Supplier under this Contract.

#### F. Computer Virus

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

#### G. Confidential Information

Any confidential or proprietary information of a Party that is disclosed in any manner, including oral or written, graphic, machine readable or other tangible form, to any other Party in connection with or as a result of discussions related to this Contract and which at

the time of disclosure either (i) is marked as being "Confidential" or "Proprietary"; (ii) is otherwise reasonably identifiable as the confidential or proprietary information of the disclosing Party; (iii) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information of the disclosing Party.; (iv) is identifiable or should be reasonably considered as Protected Health Information; or (v) any personally identifiable information, including information about DMAS' employees, contractors, and customers, that is protected by statute or other applicable law.

**H. Deliverable**

The tangible embodiment of the work performed or Services, Maintenance Services, Licensed Services, Solution, Component, Software, plans, reports, data, Product, Supplier Product and Updates provided by the Supplier in fulfilling its obligations under the Contract. The subset of Deliverables subject to formal Acceptance under Section 10 of this Contract are delineated in Appendix I of the RFP "Milestones & Deliverables."

**I. Department of Medical Assistance Services**

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

**J. Desktop Productivity Software**

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

**K. Documentation**

Those materials (including user manuals, training materials, guides, product descriptions, technical manuals, product specifications, supporting materials and Updates) detailing the information and instructions reasonably 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 user self-sufficiency (assuming a user who is proficient in the underlying technologies and tools) 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)

**M.1 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 necessary for Supplier to provide the Services, based on the Requirements as more fully described in Exhibit A.

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

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

**O. Maintenance Level**

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

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

If authorized by the Contract, means those services, preventive and remedial, provided or performed by Supplier under the Contract or for an Authorized User in order to ensure continued operation of the Software or Product, including Software Updates. Maintenance Services shall include support services. Software Maintenance Services may include the development of Work Product, if so authorized hereunder and/or through Section 12.D Change Order process in the Contract.

**Q. Party**

Supplier or DMAS.

**R. Protected Health Information**

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

**S. Receipt**

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



**T. Requirements**

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

**U. Services**

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

**V. Software**

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

**V.1. Software as a Service (SaaS)**

Software that is owned, delivered, and managed remotely by the Supplier. The Supplier delivers software based on one set of common code and data definitions that is consumed in a one-to-many model by all Application Users-(including those customers that are not a Party to this agreement) at any time, as outlined in Exhibit B. DMAS does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration/customization settings, defined herein as Work Product and/or Custom Software. There is no transfer of ownership to DMAS of the base SaaS solution. Specific customization/configurations, which are initiated exclusively for the benefit of DMAS/the Commonwealth under this Contract are deemed Work Product.

**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).

**Y.1 Supplier's Proprietary Software**

Software developed and owned by Supplier prior to the Contract Effective Date or outside the scope of this Contract, and/or any modifications thereof and derivative works based therein, and which were not designed or developed with Federal Financial Participation, including but not limited to commercially available Supplier software, and the documentation used to describe, maintain, and use such pre-existing Software shall be the sole and exclusive property of Supplier.

**Y.2.Third Party Software**

Software developed by third parties and generally distributed for commercial use, and not specifically designed nor developed for DMAS, including without limitation operating system software, tools, utilities, open source software, and commercial-off-the-shelf software from a third party licensor and which Supplier utilizes to perform the Services pursuant to the terms of this Contact shall be the sole and exclusive property of such Third party. DMAS does not contract directly with third parties and is purchasing a Solution from the Supplier.

**Z. Update**

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

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

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

**BB. Work Product**

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

**BB1. Note:** COTS products and Software as a Service 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 matching is used for COTS configuration or customization, those elements become subject to existing regulation at 45 CFR 495.360 and 45 CFR 95.617 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**

##### **A.1. Provider Services Solution**

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 June 11, 2018 through November 30, 2019 and an Operations and Maintenance Phase that begins on December 1, 2019 and ends November 30, 2023. DMAS, in its sole discretion, may extend this Contract with up to four (4) one-year option periods that would run from December 1 through November 30 for each period. DMAS will issue a modification to this Contract stating the extension period, not less than thirty (30) days prior to the expiration of any current term.

##### **A.2. - Appeals Option 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 (DDI)\_ Phase (s) from June 11, 2018 through November 30, 2018 and an Operations and Maintenance (O&M) Phase that begins on December 1, 2018 and ends November 30, 2023. DMAS, in its sole discretion, may extend this Contract with up to four (4) one-year option periods that would run from December 1 through November 30 for each period. DMAS will issue a modification to this Contract stating the extension period, not less than thirty (30) days prior to the expiration of any current term.

#### **B. Termination for Convenience**

DMAS may terminate this Contract, in whole or in part, upon not less than sixty (60) 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 and fails to cure such failure within time periods stated below.

If DMAS deems the Supplier to be in breach and/or default, 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 not to be less than forty-five (45) days, or as otherwise agreed to in writing by the parties. If Supplier fails to cure the breach as noted, DMAS may immediately terminate this Contract, in whole or in part. In the event of a partial termination the Parties will use Section 12. D. Change Order process of the Contract to equitably adjust the terms to account for those remaining Services, if necessary. 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 provided for under the Contract, DMAS will require verification of the Suppliers financial situation. If from the information, DMAS determines the Supplier will inevitably become financially unstable, DMAS may terminate the Contract before this occurs. If the Supplier ceases to conduct business in the normal course, makes a general assignment for the benefit of creditors, or suffers or permits the appointment of a receiver for its business or assets, DMAS may, at its option, immediately terminate this Contract effective at the close of business on a date specified by DMAS. In the event that DMAS elects to terminate the Contract under this provision, the Supplier shall be notified in writing, by either certified or registered mail, specifying the date of termination. The Supplier shall submit a written waiver of the licensee's rights under the federal bankruptcy laws.

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

**F. Effect of Termination**

Upon termination, neither the Commonwealth, nor DMAS, shall have any future liability except for Deliverables (including partial 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 portion of the Contract that has been terminated, but not from the rights and obligations of each Party that existed at the time of termination, and are intended to survive such termination.

**i. Termination for Convenience:**

In the event of Termination For Convenience pursuant to Section 3.B, DMAS will pay Supplier (i) a pro rata portion of the fee for Deliverables in progress, subject to any deficiencies reasonably determined by the Parties, and (ii) expenses incurred up until the date of notice of termination, including reasonable actual expenses related to shut-down. Upon such termination, DMAS will also pay Supplier for any actual demonstrated out-of-pocket costs, including Quality Maintenance Payments

and CMAS Certification Quality Maintenance Payments earned by Supplier at the time of termination.

**ii. Termination for Breach or Default:**

In the event of a Termination for Breach or Default, pursuant to 3.C, Supplier shall accept return of any Deliverable that was not accepted by DMAS, and all costs of de-installation and return of Deliverables shall be borne by Supplier. In connection with any such Termination for Breach or Default pursuant to Section 3.C, the Parties also agree to follow the then-effective DMAS approved Turnover/Transition Plan Documentation.

**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 in the manner set forth in the Turnover/Transition Plan. 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 additional charge or fee to DMAS; otherwise, Supplier shall provide such assistance at the hourly rate or a charge agreed upon by Supplier and DMAS.

**I. Contract Kick-Off Meeting**

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

**J. Contract Closeout**

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

non-compliance may affect any pending payments due the Supplier, including final payment, until the documentation is returned.

#### **4. SUPPLIER PERSONNEL**

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

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

##### **B. Supplier Personnel Supervision**

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

##### **C. Key Personnel**

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

##### **D. Subcontractors**

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

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

## **5. NEW TECHNOLOGY**

### **A. Access to New Technology**

Supplier will bring to DMAS' attention any new Supplier 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 from Supplier**

If new or replacement product or service offerings become available to DMAS under the scope of the Contract, DMAS may purchase such new or replacement products or services, and Supplier will reasonably assist DMAS to migrate to such products or services, if DMAS elects to use such new or replacement product or service offerings.

If DMAS elects to acquire new products or services as described in the above paragraph and such services replace existing Supplier-provided services, discount tiers and any commitments (as applicable per the Contract) will be revised to reflect additions or reductions in purchases of the replaced products or services through Section 12. D Change Order process.

In the event a new service offering is not available from Supplier, Supplier agrees to cooperate with DMAS and make commercially reasonable efforts to adjust its Solution to work with the new service offering.

## **6. SOFTWARE LICENSE RIGHTS & INTELLECTUAL PROPERTY**

Pursuant to 42 CFR 95.617(a), if the custom software or modifications of software and associated documentation are designed, developed and installed by the Supplier with Federal financial participation for DMAS, DMAS shall have all ownership rights in such software or modification ("Custom Software"). In addition, pursuant to 42 CFR 95.617 (b), the Federal government shall reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications, and documentation.

Custom Software is not meant to include consultation with DMAS on software design or minor modifications to the Supplier software to configure the software for DMAS' use that result in a Solution Update or a new general release version of the Solution or any of its Components. Any specific customizations/configurations/modifications to the process or Virginia-specific customizations shall be Work Product. Custom Software is meant to include software written to add functionality to the Supplier's product specifically to meet the requirements of DMAS, which is not marketable to other Medicaid programs and funded under the terms of this Contract.

Supplier Proprietary Software and Third Party Software which is provided at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership provisions in paragraphs 42 CFR 95.617 (a) and (b).

The Supplier Proprietary Software and Third Party Software is being used by Supplier in support of the required services, to be performed pursuant to this Contract, as part of its Software as a Services solution (the "SaaS Services") and all rights in and to the use of the software that makes up the SaaS Services shall terminate and expire at the end of the Contract.

Nothing in this Section shall relieve Supplier of any responsibilities to provide the required Documentation.

**A. Software License Rights/Grants**

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 Licensed Software, either via the Internet (for 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 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 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. License Type**

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

Notwithstanding Section 6.A above, the Solution is a SaaS Solution with a subscription fee. The Parties currently do not anticipate executing such licenses, but the Parties agree to cooperate in good faith in the event such a license is necessary.

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



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

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

**7. RIGHTS TO WORK PRODUCT**

DMAS is a state agency of the Commonwealth of Virginia, therefore, any license to Supplier’s proprietary software shall be held by the Commonwealth. Any 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 incorporated into Exhibit C - “Escrow” 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. Supplier shall deliver all source and object code and all executables and documentation for all Work Product that is Custom Software. 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). The Ownership Rights are addressed further under Section 6 “Software License Rights & Intellectual Property”, herein. 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. Supplier's Proprietary Software**

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.

The Ownership Rights are addressed further under Section 6 "Software License Rights & Intellectual Property", herein.

**D. Return of Materials**

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

**8. GENERAL WARRANTY**

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

**A. Ownership**

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

**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:

- 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 Contract, and any associated Deliverables shall be fit for the particular purposes specified by Requirements in this Contract., and Supplier is possessed of industry standard 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 shall be fit for the particular purposes specified in the Requirements in this Contract. Further, Supplier is possessed of industry standard 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 Requirements specify 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 in accordance 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. Current release level means one release level prior to the latest generally available version or generally available version.
- 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 beyond what is identified in the Requirements;
- 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 who is proficient in the underlying technologies and tools to understand & make productive use of the Solution or Solution Component or to use/operate the Software without reference to any other materials or information.

**G. Malicious Code**

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

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

**H. Open Source**

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

**I. Supplier's Viability**

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

**J. Supplier's Past Experience**

Supplier warrants that in the past five years prior to the Effective Date of this Contract, 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 termination for breach by any Medicaid Title XIX or XXI customer.

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

**9. DELIVERY AND INSTALLATION**

**A. Scheduling**

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

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

**B. Deployment of Solution**

**1. Supplier Deployment of Solution**

The Solution fee, per Exhibit B, includes initial deployment of the complete Solution. Supplier is required to deploy the Solution in accordance with the deployment schedule set forth in then-current mutually agreed upon Project Plan of 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 configured for productive use, and shall supply DMAS with a copy of the results of the diagnostic evaluation promptly after completion of deployment.

Supplier agrees that failure to deploy the Solution in accordance with the delivery schedule set forth in the then-current mutually agreed upon Project Plan in the applicable Contract shall constitute a material breach of this Contract resulting in damages to DMAS, provided such failure to deploy the Solution past the Solution Cure Period in Section 10.D is due to Supplier's fault or the fault of the Supplier's Solution. In the event of vendor/contractor/Agent dispute relating to fault/failure determinations and/or apportionment of fault/responsibility, DMAS will serve as the final decision-making authority. DMAS decisions will be subject to the Escalation Procedures and dispute resolution provisions of this Contract. Supplier agrees to credit DMAS an amount equal to one quarter of one percent of the total Solution fee, for each day after the scheduled deployment date that the Solution has not been deployed. If the delay lasts longer than thirty (30) days, or lasts beyond the Solution Cure Period, whichever is longer, DMAS may immediately cancel the Contract and collect the damages specified above for each day of that period of late delivery. DMAS reserves any and all other remedies available at law or in equity for delays lasting longer than thirty (30) days or for non-deployment.

**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 who is proficient in the underlying technologies and tools may reconstruct the configuration of the Software.

**D. Managed Environment**

DMAS is establishing and building a multi-provider, integrated services platform (the "**Integrated Services Platform**") for the delivery of certain IT services to DMAS and the other Business Partners within the IT environments supported by DMAS (collectively, the "**Managed Environment**"), as is further described in **Integration Services** (within Section 3.a.7.3) and by further notice from DMAS to Integrated Supplier from time to time. The Integrated Services Platform is and shall comprise various services provided by various third party suppliers, including the Services and Supplier (each such supplier, an "**Integrated Supplier**"), with which DMAS shall contract from time to time to provide services to DMAS and other Business Partners and 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; provided however, that Integrated Supplier shall not be required to disclose any of its proprietary information, tools, processes and procedures to other DMAS modular vendors other than published interfaces. 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, Supplier shall, subject to the terms of this Agreement, 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 non-proprietary business processes and associated Equipment, Materials and/or Systems to the extent required and appropriate for Business Partners, Customers or other Integrated Suppliers to perform the work required of or assigned to them; (ii) timely providing non-proprietary 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 as set forth in the Turnover Plan 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:

1. **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)**.
2. **Operating Level Agreements.** If, when and as requested by DMAS, enter into mutually agreed joint governance and issue resolution document(s), including operating level agreements, between and among MSI, Integrated Supplier and other Integrated Suppliers. Operating Level Agreements are further described in **Section 9.D.3 (Operating Level Agreements)**.

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

**D.1 Policy and Procedures Manual.** Without limiting the foregoing, until the Service Management Manual has been implemented by agreement of the Parties in

accordance with (e) (Transition to Service Management Manual), the following shall apply.

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

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

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

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

- b) Compliance. Integrated Supplier shall perform the Services in accordance with applicable Laws, DMAS 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.
- c) Maintenance, Modification and Updating. Integrated Supplier shall promptly modify and update the Policy and Procedures Manual to reflect changes in the operations or procedures described therein, to reflect changes in the work to be performed, and to comply with DMAS Rules. The Integrated Supplier shall provide the proposed changes in the manual to DMAS for review, comment and written approval. Integrated Supplier shall maintain the Policy and Procedures Manual so as to be accessible electronically to DMAS and Business Partner and Customer management and Users via a secure web site in a manner consistent with DMAS's security policies.
- d) Regular Review. The Parties shall meet to perform reviews of the Policy and

- Procedures Manual as reasonably requested by DMAS.
- e) Transition to Service Management Manual. As requested by DMAS, Integrated Supplier shall work with DMAS to supersede the Policy and Procedures Manual with the Service Management Manual in connection with DMAS's further development and operation of the Managed Environment. If and to the extent the Policy and Procedures Manual is superseded by the Service Management Manual, Supplier shall comply with the Service Management Manual and cooperate with DMAS and its designee(s) in its maintenance and development. Until such time as the Service Management Manual shall have superseded the Policy and Procedures Manual in accordance with the foregoing and unless otherwise provided, or the context shall otherwise require, references in this Agreement to the Service Management Manual shall be deemed references to the Policy and Procedures Manual.
  - f) Work Product. As between the Parties, the Policy and Procedures Manual will be deemed to be a Work Product owned by DMAS.

#### D.2 Service Management Manual

- a) Upon its adoption by DMAS, the Service Management Manual will serve as a common document shared among the Integrated Suppliers, which all will operate in accordance with and be subject to the terms therein, as applicable to each such party. Among other things, the Service Management Manual will provide detailed descriptions of the Managed Environment and the manner in which functions will be performed by the Integrated Supplier and each of the other Integrated Suppliers, including:
  - i. Equipment, Materials and Systems to be procured, used or supported;
  - ii. Documentation (including manuals, user guides and specifications) to be created and/or maintained by the Integrated Supplier and the other Integrated Suppliers, including, as applicable, the MSI;
  - iii. specific activities to be undertaken by the Integrated Supplier in connection with each Service, including, where appropriate, the direction, supervision, monitoring, staffing, reporting, planning and oversight activities to be performed by the Integrated Supplier under this Agreement;
  - iv. Operational Change Control Procedures and Contract Change Control Procedures;
  - v. procedures for DMAS, Business Partners and the Integrated Suppliers to interact, communicate, escalate and resolve issues, exchange information and provide access to each other;
  - vi. checkpoint reviews, testing, acceptance, controls and other procedures to be implemented and used to assure service quality;
  - vii. processes, methodologies and controls to be implemented and used by the Integrated Suppliers to comply and confirm compliance with (1) DMAS Rules; and (2) other obligations in the applicable agreements, including compliance with Laws; and
  - viii. other provisions related to the Managed Environment, as requested by DMAS.The Service Management Manual will be initially created and continuously updated and enhanced throughout the Term, with the MSI taking overall responsibility for preparing, updating, maintaining and ensuring the accuracy of the Service Management Manual template, with the cooperation and support of the other Integrated Suppliers. The Integrated Supplier will work with the MSI and the other Integrated Suppliers in creating and maintaining the contents of the Service Management Manual, pursuant to a process further described in this Contract. The Service Management Manual, and any updates thereto, will be subject to DMAS's approval.
- b) The Integrated Supplier will perform the Services in accordance with the most



recent DMAS-approved version of the Service Management Manual.

- c) As between the Parties, the Service Management Manual will be deemed to be a Work Product owned by DMAS.

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

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

## **10. ACCEPTANCE**

### **A. Software and Deliverable Acceptance Criteria**

Software and Deliverables shall be accepted when DMAS determines that such Software and Deliverables operate in accordance with the Contract Requirements and DMAS notifies Supplier in writing of its acceptance. At a minimum, Acceptance Criteria for Software and Deliverables, and for the Solution as a whole, shall ensure that all of the functionality described in the Requirements set forth in Exhibit A have been delivered to DMAS. Acceptance shall be based on the requirements for each Deliverable and shall not be deemed acceptance of the Solution as a whole. Supplier shall be responsible for ensuring that all Deliverables meet the agreed upon requirements of each Deliverable. Should a previously Accepted Deliverable require further modification in order to meet the overall requirements of the Solution it may be subject to Section 12. D. - Change Orders.

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 the period agreed to 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\\_102008.pdf](http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_Meals_Lodging_102008.pdf)), or a successor URL(s)). DMAS shall provide to Supplier written notice of Acceptance upon completion of Acceptance testing based on the agreed upon Requirements/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.

**B. Software and Deliverable Cure Period**

Supplier shall correct any non-conformities with the agreed upon requirements that are identified during Acceptance testing and re-submit such non-conforming Software or Deliverable for re-testing within the timeframes set forth in the mutually agreed upon Acceptance criteria regarding 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/Acceptance Criteria in such re-submission, DMAS may, in its sole discretion: (i) reject the Software or Deliverable in its entirety and require additional cure by Supplier to achieve the Requirements; (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 (as agreed to by the parties), is not forthcoming. Failure of the Software or a Deliverable to meet, in all material respects, the Requirements/Acceptance Criteria after the second set of acceptance tests shall constitute a default by Supplier. In the event of such default, DMAS may, at its sole discretion, terminate the Contract, in whole or in part, for the Solution to be provided thereunder by Supplier subject to Section 3.C. Termination for Breach and Default. This remedy is in addition to and not in lieu of any other remedies of DMAS set forth herein or available at law or in equity.

**C. Solution Acceptance Criteria**

Solution shall be accepted when DMAS determines that such Solution operates in accordance with the Contract Requirements and notifies Supplier in writing of its Acceptance. At a minimum, Acceptance Criteria for the Solution shall ensure that the functionality described in the Requirements set forth in Exhibit A have been delivered to DMAS. Supplier shall be responsible for ensuring the Solution meets the agreed upon requirements of each deliverable and the Solution as a whole.

DMAS agrees to commence Solution Acceptance testing in accordance with the work plan and the DMAS approved Test Plan. Acceptance testing will be no longer than the period agreed to in writing between DMAS and Supplier, after deployment of the Solution. Supplier agrees to provide DMAS such assistance and advice as such DMAS may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses. Any such travel expenses must be pre-approved by DMAS and shall be reimbursable by DMAS at the then-current per diem amounts as published by the Virginia Department of Accounts [http://www.doa.virginia.gov/Admin\\_Services/CAPP/CAPP\\_Topics/20335\\_Meals\\_Lodging\\_102008.pdf](http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335_Meals_Lodging_102008.pdf), or a successor URL(s)). DMAS shall provide to Supplier written notice of Acceptance upon completion of Acceptance testing.

**D. Solution Cure Period**

Supplier shall correct any non-conformities with the agreed upon requirements that are identified hereunder and shall thereafter re-submit such previously non-conforming Solution or Component products or Services for re-testing within the timeframes set forth in the mutually agreed upon Acceptance criteria regarding non-conformance to Supplier, or as otherwise agreed between DMAS and Supplier. Should Supplier fail to deliver a Solution which meets the Requirements/Acceptance Criteria in such re-submission, DMAS may, in its sole discretion: (i) reject the Solution in its entirety and require additional

cure by Supplier to achieve the Requirements; (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 (as agreed to by the parties) 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 the Contract, in whole, for the Solution to be provided hereunder by Supplier subject to Section 3.C. Termination for Breach and Default. This remedy is in addition to and not in lieu of any other remedies of DMAS set forth herein or available at law or in equity.

## **11. WARRANTY AND MAINTENANCE SERVICES**

At any time during the Warranty or Maintenance Period, as applicable, Supplier shall provide the following warranty or maintenance services (as outlined in Exhibits A & B) to maintain the Solution in accordance with the Requirements. During the Warranty Period, such services shall be performed without additional charge to DMAS. During the Maintenance Period, charges shall be in accordance with this Section and Exhibit B.

### **A. Known Defects**

Promptly notify DMAS in writing of any material defects or malfunctions in the Solution or Documentation of which it learns from any source, correct any such defects or malfunctions or provide a work around until corrected based on the severity Level of the defect, and within a time period mutually agreed upon by the Parties of Supplier's knowledge of such defect or malfunction and provide DMAS with corrected copies of same. Notwithstanding the foregoing, Supplier shall also notify DMAS in writing of all defects or malfunctions in the Solution via a defect tracking log.

### **B. New Releases**

Provide to DMAS no later than the first day of general release, copies of the 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. Commercial Off the Shelf (COTS) Software would be made available as part of Supplier's Solution on a mutually agreed upon time frame, the DMAS release cycle.

### **C. Coverage**

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

### **D. Service Levels**

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

The level of severity (e.g., 1, 2, 3, 4), shall be outlined in the Quality Management Plan developed during the DDI Phase, but which in no case shall be mutually agreed upon less than three months prior to the beginning of the O&M Phase.

**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 personnel for either party; i.e., by the Parties listed on "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:

<b>Level of Escalation</b>	<b>DMAS</b>	<b>DXC</b>
<b>First</b>	Director of the Enterprise Project Management Office (PMO)	Project Manager
<b>Second</b>	Chief Information Officer	Systems/Technical Manager
<b>Third</b>	Deputy Director For Finance	Account Manager
<b>Fourth</b>	Agency Director	Executive Account Director

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.

**G. Remedies**

If Supplier is unable to make the Solution or any Component thereof conform, in all material respects to the Contract following expiration of any applicable cure period. DMAS shall have the right to terminate the Contract, subject to Section 3.C. Termination for Breach or Default, with DMAS reserving all rights to any and all applicable remedies set for herein, in law, or in equity. DMAS shall discontinue use of any Solution Component Software or product.

## **H. Solution Support Services (Maintenance) and Renewal Options**

Supplier shall provide Solution Support Services (Maintenance) during the entirety of the Contract Term(s), pursuant to the fixed price for O&M included in Exhibit B.

## **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 mutually agreed upon 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 if applicable.

### **B. Reproduction Rights**

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

### **C. Reimbursement of Expenses**

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

### **D. Change Orders**

Any change to the Contract's original technical and functional Requirements or other contractual obligations must be described in a written change request. Any such change request shall be accompanied by a formal quote from the Supplier, based on the authorized fees in Exhibit B, Pricing Schedule. The change request shall include (a) a detailed description of each product or service proposed, including such product and services components, at the Exhibit B line item level, (b) the quantity of each such component, (c) the contract price, (d) any additional percentage discount offered, and (e) an extended price. Supplier's quote shall also include a proposal describing the approach Supplier plans to take in developing, implementing, and maintaining its offering. Either

Party may issue a change request that will be subject to written approval of the other Party before it becomes part of this Contract as a formal modification to the Contract. In no event shall any change request or modification thereto require the Supplier to provide any products or services that are beyond the scope of this Contract as such scope is defined in Exhibit A hereto.

#### **E. Ordering**

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

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

#### **F. Invoice Procedures**

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

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

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

To the extent that Supplier issues documentation to Medicaid providers under this Contract that require postage, such postage is a pass-through cost. Postage fulfillment will be provided by third-party shipping agents or US Postal Service. Supplier will act in the capacity of an agent role for postage fulfillment and is not liable for non-delivery except as a result of mislabeling of material by Supplier. Supplier will be paid for its services, including postage, for any non-delivery by third-parties or the US Postal Service. Supplier will be paid for any reshipments/second mailings required due to mis-delivery by third parties. Supplier will invoice postage as a separate line item on monthly invoices. If non-

delivery was a result of mislabeling of material by Supplier, the Supplier will reship or provide second and subsequent mailings at no cost for its services or postage.

#### **G. Purchase Payment Terms**

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

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

If there are any disputed items, DMAS shall pay all undisputed charges and promptly notify Supplier in writing of any disputed amount. Supplier shall thereupon review its records, and, if it does not concur with DMAS, provide DMAS with documentation to support the charge. If such charges remain in dispute, such dispute shall be resolved in accordance with the Dispute Resolution section of this Contract. In the absence of the Supplier's written evidence identifying the merit of the disputed amounts, DMAS may not pay the disputed amounts and may consider the matter concerning the specific identified amounts closed. All payment terms are net thirty (30) days after Acceptance. DMAS may be required to pay interest on late payments pursuant to the Code of Virginia Section 2.2-4355.

#### **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**

In compliance with Section 9.D., Supplier will provide DMAS with a policy and procedures guide that describes how the Supplier and DMAS will work together and how performance, including Deliverables and Services, are to be delivered. The guide will provide process diagram details, working activities, interface points with DMAS and Supplier deliverables. Updated versions of the guide will be provided by Supplier to DMAS every 6 months during the term and any extensions of the Contract.

## **16. TRAINING AND DOCUMENTATION**

### **A. Training**

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

### **B. Documentation**

Supplier shall deliver to DMAS two (2), or such number as agreed upon between the parties, complete hard copies or electronic media of Documentation applicable to Supplier's Deliverable provided to DMAS, as requested by DMAS. Should Supplier revise or replace the Documentation, or should Documentation be modified to reflect Updates, Supplier shall deliver to DMAS such updated or replacement Documentation, in the same quantity and media format as originally requested by DMAS, or as agreed upon between the parties. DMAS shall have the rights, if any, granted to it under Supplier's SaaS Solution, to make as many additional copies of the Documentation, in whole or in part, for its own & DMAS Business 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 to the extent indicated by the Requirements. Such Documentation shall be revised to reflect any modifications, fixes or updates made by Supplier. DMAS shall have the rights if any, granted to it under Supplier's SaaS solution, at DMAS' 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 for its own internal use & DMAS Business use. DMAS shall continue to include Supplier's copyright notice. To the extent any Supplier Confidential Information is included (and identified to DMAS) in the Documentation it shall be subject to the Confidentiality restrictions which shall survive the termination of this Contract.



## **17. DMAS SELF-SUFFICIENCY**

At any time during Supplier's performance of the Contract upon appropriate written notification, DMAS may require that Supplier provide to DMAS a detailed plan to develop DMAS self-sufficiency and to transition operation and management, pursuant to the Turnover/Transition Requirements of the Contract, 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. The Parties shall mutually agree on the scope and price of any self-sufficiency services. 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. The Parties shall mutually agree on the scope and price of any post termination Maintenance Services.

## **18. COMPETITIVE PRICING**

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## **19. ESCROW AGREEMENT**

Supplier shall maintain a copy of all Content/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 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 may be 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.

Supplier agrees 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 in the failure to cure such breach within the applicable cure period set forth in the Contract, Supplier's bankruptcy, Supplier's failure to continue to do business in the ordinary course. Supplier agrees to pay all expenses associated with establishing and maintaining the escrow account and the contents mentioned above.

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

## **20. CONFIDENTIALITY**

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

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

### **B. Exclusions**

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

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

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

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

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

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

#### **D. Confidentiality Statement**

All Supplier personnel, contractors, agents, and subcontractors performing Services pursuant to this Contract shall be required to sign a confidentiality statement or non-disclosure agreement, or certify to Supplier's Code of Business Conduct (if such Code of Business Conduct includes all applicable HIPAA and PHI Requirements). Any material 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 Supplier/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 Supplier/Contractor shall comply, and shall ensure that any and all subcontractors comply, with all State and Federal laws and regulations with regards to handling, processing, or using the Department's PHI and ePHI. This includes but is not limited to 45 C.F.R. Parts 160 and 164 Modification to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules; Final Rule, January 25, 2013 and related regulations as they pertain to this agreement. This also includes the requirements in Virginia Code § 32.1-325.3, DMAS regulations, and federal Medicaid requirements regarding safeguarding information of applicants and recipients as set forth in 42 C.F.R. 431, Subpart F.

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

## **21. INDEMNIFICATION AND LIABILITY**

### **A. Indemnification**

Supplier agrees to indemnify, defend and hold harmless the Commonwealth, DMAS, their officers, directors, agents and employees (collectively, "Commonwealth's Indemnified Parties") from and against any and all losses, damages, claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, assessments, fines, penalties (whether criminal or civil), judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Commonwealth's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) any act or omission of any employee,

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

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

## **B. Liability**

Except for liability with respect to (i) any intentional or willful misconduct or negligence of any employee, agent, or subcontractor of Supplier, (ii) 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 phase, and the total value of the Contract if the claim arises during the Operations & Maintenance Phase. Supplier agrees that, subject to the limitations & liability categories described above & herein, 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 two times the total Contract value, it being understood that multiple losses stemming from the same root cause constitute a single incident.

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

## **22. INSURANCE**

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

Professional (Technology Errors and omissions) insurance including cyber security liability coverage in the amount of \$5,000,000 per occurrence.

The Commonwealth of Virginia will be included as an additional insured.

## **23. PERFORMANCE BOND**

The Supplier shall deliver to the DMAS Contracts Management office an executed performance bond, in a form acceptable to DMAS with DMAS as obligee. The surety shall be a surety company or companies approved by the State Corporation Commission to transact business in the Commonwealth of Virginia. The successful Supplier shall obtain the required performance bond in form and substance acceptable to the Commonwealth and provide it to the Commonwealth no later than 7 days after the Contract Effective date detailed in the Contract. The successful Supplier must meet this performance bond requirement by providing the Commonwealth (as required) a performance bond covering the entire Contract period including all options to extend the Contract. The performance bond includes the Design, Development and Implementation (DDI)/Start-up period of the Contract 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 each 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 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, published on the DMAS website, or about which Supplier has been notified in writing by DMAS. Supplier shall also comply with all applicable federal, state and local laws and regulations. Changes to the Commonwealth-specific laws, regulations, and/or policies that result in a substantive change in scope will be handled through the Change Order process in 12.D.

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 or for Supplier's employees, certify to Supplier's Code of Business Conduct (if such Code of Business Conduct includes all applicable HIPAA and PHI Requirements) 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. The foregoing language does not impose an additional indemnification obligation on the Supplier in addition to the indemnification obligations stated in Section 21 of this Contract.

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

#### **25. IMPORT/EXPORT**

In addition to compliance by Supplier with all applicable export laws and regulations, DMAS requires that any data deemed "restricted" or "sensitive" by either federal or state authorities,

must only be collected, developed, analyzed, or otherwise used or obtained by persons or entities working within the boundaries of the United States.

## **26. BANKRUPTCY**

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

## **27. GENERAL PROVISIONS**

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

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

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

The then-current contractual provisions at the following URL are mandatory contractual provisions, required by law or by DMAS, and that are hereby incorporated by reference: [https://www.vita.virginia.gov/uploadedfiles/VITA\\_Main\\_Public/scm/StatutorilyMandatedTsandCs.pdf](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](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 the 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\\_FTI\\_data.pdf](http://www.vita.virginia.gov/uploadedFiles/VITA_Main_Public/SCM/Mandatory_IRS_Pub_1075_for_FTI_data.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 and/or DMAS, as a material breach of the Contract. Further, the use of the term “Contractor” in these terms and IRS Publication 1075 means the same as the term “Supplier,” as defined and used in the Contract. FTI consists of federal tax returns and return information (and information derived from it) that is in the agency’s possession or control which is covered by the confidentiality protections of the Internal Revenue Code (IRC) and subject to the IRC 6103(p)(4) safeguarding requirements including IRS oversight. FTI is categorized as Sensitive but Unclassified information and may contain personally identifiable information (PII).

The then-current 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 DMAS policy, or the adoption of revised eVA business requirements. If a change is made to the terms and conditions, a new effective date will be noted in the document title. Supplier is advised to check the URLs periodically. Changes to the Commonwealth-specific laws, regulations, and/or policies that result in a substantive change in scope will be handled through the Change Order process in 12.D

**C. Compliance with the Federal Lobbying Act**

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

**D. Governing Law**

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

**E. Dispute Resolution**

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



body shall render a final decision in writing within thirty (30) days after its receipt of the Supplier's written claim.

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

Upon request from the public body from whom the relief is sought, Supplier agrees to submit any and all contractual disputes arising from this Contract to such public body's alternative dispute resolution (ADR) procedures, if any. Supplier may invoke such public body's ADR procedures, if any, at any time and concurrently with any other statutory remedies prescribed by the Code of Virginia. The Parties shall, except where immediate injunctive relief is sought, utilize the Escalation Procedures in Section 11.F. prior to the processes in this section.

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

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

Supplier shall not use the name of DMAS or refer to DMAS, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of DMAS. Any press release will be mutually agreed upon by Supplier and DMAS. In no event may either Party use a proprietary mark of the other Party without receiving the prior written consent of the other Party.

**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 Commonwealth entity, so long as the assignee agrees in writing to be bound by the all the terms and conditions of this Contract. Supplier must consent to any assignment to a non-Commonwealth entity.

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 ninety (90) calendar days, DMAS, by written notice given during the postponement or extension, may terminate Supplier's right to render further performance pursuant to Section 3. Term and Termination.

**N. Remedies**

The remedies are set forth in this Contract. In addition to any specific remedy, DMAS reserve any and all other remedies that may be available at law or in equity. DMAS may exercise multiple remedies as provided in this Contract or by applicable law, provided that DMAS shall not receive double recovery for financial damages.

If, and to the extent, a single event triggers multiple SLA to have not been met, DMAS, at its sole discretion, shall choose one service level metric to apply. Reoccurrence of the same event more than one time, or a similar event, will be treated as separate events with separate SLAs assessed.

Written notification of each failure to meet a performance requirement shall be given to the Supplier prior to assessing service level agreement amounts. The Supplier shall have five (5) business days from the date of receipt of written notification of a failure to perform to specifications to cure the failure. However, additional days can be approved by the [Contract Administrator for DMAS] if deemed necessary. If the failure is not resolved within this warning/cure period, liquidated damages may be imposed retroactively to the date of failure to perform. The imposition of liquidated damages is not in lieu of any other remedy available to DMAS, however, DMAS may not recover direct damages in addition to liquidated damages for failure to meet a Service Level.

Supplier shall only be responsible if a failure to meet the Service Levels was the fault of the Supplier, Supplier's Solution, and/or Supplier's subcontractor, and not caused by force Majeure events, or other events beyond Supplier's reasonable control. In the event of vendor/contractor/Agent dispute relating to fault/failure determinations and/or apportionment of fault/responsibility, DMAS will serve as the final decision-making authority. DMAS decisions will be subject to the Escalation Procedures and dispute resolution provisions of this Contract.

**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, annual service organization control (SOC) reports in accordance with AICPA standards, fee schedules, documents, papers, and records of the Supplier required to verify Supplier's performance, or any subcontractor's performance, under this Contract. Access to records includes any records that are stored offsite.

DMAS, the Centers for Medicare and Medicaid Services, state and federal auditors, or any of their duly authorized representatives, shall be allowed to inspect, copy, and audit any of the above documents, including, medical and/or financial records of the Supplier and its subcontractors, subject to Section 20 of this Contract.

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

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

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

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

**S. Entire Contract**

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

- i). Exhibit A – Requirements;
- ii). Exhibit B – Solution Options List; Fees, Service Charges, and Payment Schedule;
- iii). Exhibit C - Escrow Agreement;
- iv). Exhibit D - End User Licensing Agreement (for reference only); (not applicable)
- 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. The provisions of the Virginia Department of General Services, Division of Purchases and Supply Vendor's Manual shall not apply to this Contract or any order issued hereunder. This Contract may only be amended by an instrument in writing signed by DMAS and Supplier. In the event of a conflict, the following order of precedence shall apply: this Contract, Exhibit G, Exhibit A, Exhibit B, Exhibit C, Exhibit F and Exhibit E.

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

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

**DMAS**

By: Jennifer Lee, MD, MChE  
(Signature)

Name: Jennifer S. Lee, MD  
(Print)

Title: Director

Date: 12 JUN 18

Address for Notice:  
600 E. Broad Street

Richmond, VA 23219

Attention: Supplier Contact

**SUPPLIER**

By: [Signature]  
(Signature)

Name: Naron Puri  
(Print)

Title: SVP/IGM-Americas

Date: 12 JUN 18

Address for Notice:  
1775 Tysons Blvd

Tysons, VA. 22102

Attention: Contract Administrator

## EXHIBIT A – REQUIREMENTS

For purposes of this Exhibit A, the term "Requirements" shall mean the following documents with the document with the most current date taking precedence with respect to its terms over earlier dated documents:

1. Request for Proposals RFP 2016-02, dated July 15, 2016, seeking a Modular Core Services Solution (MCSS)
2. RFP 2016-02 MCSS Addendum 1, dated July 20, 2016
3. RFP 2016-02 MCSS Addendum 2, dated July 27, 2016
4. RFP 2016-02 MCSS Addendum 3, dated August 15, 2016
5. RFP 2016-02 MCSS Addendum 4, dated August 22, 2016
6. RFP 2016-02 MCSS Addendum 5, dated August 26, 2016
7. RFP 2016-02 MCSS Addendum 6, dated September 8, 2016
8. HPE original Technical proposal in response to RFP 2016-02, submitted on September 22, 2016
9. Proposal clarification, submitted on November 16, 2016
10. Oral Presentation and demonstration, in-person onsite in Richmond on December 7, 2016
11. Security Assessment and Governance Map for Non Premise Based Services\_11, submitted on February 22, 2017
12. HPE Response to Negotiation Agenda Questions, submitted on March 30, 2017
13. *Clarifications Set 1: Security Assessment and Governance Map for Non Premise Based Services\_11*, submitted on April 3, 2017
14. *Clarifications Set 2: Security Assessment and Governance Map for Non Premise Based Services\_11*, submitted on June 16, 2017.
15. DXC Clarification Security Assessment 6-16, Row 12 Attachment DXC Azure Support RU Form-Sample, DXC Clarification Security Assessment 6-16-17, Row 79 Executed BAA, submitted on June 20, 2017
16. *Clarifications Set 3: Security Assessment and Governance Map for Non Premise Based Services\_11*, submitted on July 14, 2017 (dated July 19, 2017).
17. **Provider Call Center option:** Responded to request to confirm pricing for Provider Call Center option, submitted on August 10, 2017
18. Revised staffing section and replacement resumes, submitted on January 15, 2018
19. Updated Supplier profile "Support Management and Personnel" section of RFP response, from February 15, 2018, and DXC Entity Letter, stating DXC will honor HPE's initial proposal, as amended through negotiations.
20. The Parties will finalize the work plan, which will be mutually agreed upon during DDI.
21. The final Negotiations Summary, dated May 17, 2018.

### Additional – For Appeals Option Only:

1. Demonstration of Provider Appeals solution, in-person session onsite in Richmond, on April 26, 2017
2. DXC Cover Letter, Response to clarifications for the Comp Appeals Solution, and RTM-Comp Functional Appeals, submitted on June 9, 2017
3. Response to Comprehensive Appeals Solution Clarifications (originally submitted on submitted on June 9), submitted on June 16, 2017
4. Security Assessment and Governance Map for Non Premise Based Services for the Comprehensive Appeals Solution, submitted on June 26, 2017
5. Response (email) to clarification request for the Comprehensive Appeals Solution (confirm products), submitted on July 11, 2017
6. Updated Work Plan, to start on June 1, 2018, and showing a 5-month DDI and updated price sheet, submitted on December 11, 2017 (dated December 7, 2017). *Subsequent discussion indicated a 6 month DDI, as reflected in DXC's Cost proposal: "DXC Appeals v3 wLic02\_RFP 2016-MCSS AppC-PricingSchedule-Template 031220" dated March 12, 2018. The Parties will finalize the work plan, which will be mutually agreed upon during DDI.*

7. Demonstration of Provider Appeals solution, in-person session onsite in Richmond on April 26, 2018.
8. Response to DMAS clarification request for the Appeals Solution, submitted Monday May 7, 2018, email response clarifying payment and distribution of hours sent on May 15, 2018, and additional email response clarifying RightFax and additional user costs sent on May 17, 2018.



COMMONWEALTH of VIRGINIA  
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES  
600 East Broad Street, Suite 1300  
Richmond, VA 23219

May 17, 2018

VIA: E-mail  
[scott.mack@hpe.com](mailto:scott.mack@hpe.com)

Scott Mack  
Hewlett Packard Enterprise/DXC Technology Services, LLC  
5400 Legacy Drive  
Plano, TX 75024

Dear Mr. Mack:

DMAS would like to thank DXC for its continued interest in Request for Proposal (RFP 2016-02) for the Provider Services Solution (PRSS) and Appeals option. DMAS is in the final stages of evaluation, and in order to facilitate further discussions of a **potential** contract, hereby provides a summary of the evaluation & negotiation points as of the date of this letter, stated below:

- Corporate Entity:
  - The original entity that submitted a proposal to DMAS was Hewlett Packard Enterprise (HPE). DXC Technology Services, LLC, has agreed & provided entity letter to assume & honor the original proposal, as negotiated between the Parties.
- Hosting:
  - The Solution will be Vendor-hosted.
- Timeframe for Project:
  - Anticipated start date is still TBD, but will be communicated with the winning Offeror as soon as it has been determined. The draft contract and milestone charts will be updated in advance of final execution.
  - The timeframe for the Design, Development, & Implementation (DDI) Phase is 16 months in the cost proposal; however, the DDI period will be 18 months with a 2-month buffer. Note that the Operations and Maintenance (O&M) Phase will begin in December 2019 or the first day of the 19<sup>th</sup> month. This will be clarified before final execution.
  - DDI and O&M will be distinct phases with no overlap.
- Optional Services:
  - DMAS elected the Appeals option and the Meeting Space option proposed by the vendor. For the Appeals option, DMAS is hereby electing that the Appeals Option be provided as a total Solution, with DXC providing and managing the Dynamics licensing, as reflected in the Cost Proposal included in the Appeals Option of the final Contract (Exhibit B). DMAS acknowledges the forty (40) hours required to enable the Solution work with G-Suite will come out of the PRSS customizable hours, and that the additional software licenses required will be provided at no cost to DMAS.
- Changes to the Services and/or Solution: The original proposal has not been modified by the Offeror, except as noted by the documents included in Exhibit A and B.
- PRSS Cost Proposal:
  - In DXC's January 19, 2017 pricing schedule document entitled "02\_RFP 2016-MCSS Appendix C-PricingSchedule-HPEVendorHosted\_01192017", DXC's original cost proposal was revised as follows:
    - A 3% DDI reduction and a 29% O&M reduction in costs.
    - The DDI period was adjusted to 16 months.



- In DXC's April 19, 2017 pricing schedule document entitled "DXC RFP 2016-02 MCSS Appendix C - Updated Pricing Schedule - Provider Services", DXC's cost proposal was revised as follows:
    - The DDI start date was adjusted to March 1, 2018.
    - The DDI cost was adjusted to reflect the revised start date.
  - DMAS concurs with all assumptions as stated in the document "001\_HPE\_Provider\_Services\_Modular\_Core\_Services\_Solutions\_RFP\_No.2016-02-Pricing Assumptions", except for the following which has been rendered not applicable by subsequent negotiation discussions:
    - Time periods in Appendix C – Pricing Schedule have been adjusted to assume a March 1, 2018 start date with a 16-month DDI period.
    - Time periods in Appendix C – Pricing Schedule have been adjusted to assume a June 1, 2018 start date with an 18-month DDI period.
  - The most current cost proposal, dated March 9, 2018, sets the current price over the life of the Contract to be \$32,168,812.
- Appeals Option Cost Proposal:
    - DMAS elected the Appeals solution proposed by DXC. The original price proposed by DXC on May 23, 2017 in the pricing schedule document entitled "DXC Appeals price sheet no links", was revised by DXC as follows:
      - Microsoft licensing costs added to cost proposal.
    - In DXC's December 8, 2017 pricing schedule document entitled "DXC Appeals price sheet 12082017 no links", DXC's cost proposal was revised as follows:
      - The DDI period was adjusted from 4 months to 5 months.
      - The DDI cost was adjusted to reflect the revised start date of March 1, 2018.
    - In DXC's March 12, 2018 pricing schedule document entitled "DXC Appeals v3 wLic02\_RFP 2016-MCSS AppC-PricingSchedule-Template 031220", DXC's cost proposal was revised as follows:
      - The DDI period was adjusted from 5 months to 6 months.
      - The DDI cost was adjusted to reflect the revised start date of June 1, 2018.
    - DMAS concurs with all assumptions as stated in the document "Department of Medical Assistance Services" dated May 24, 2017, except for the following which has been rendered not applicable by subsequent negotiation discussions:
      - The warranty period shall be the life of the contract.
    - DMAS concurs with all assumptions as stated in the document "DXC Appeals and PRSS Assumptions 030918" dated March 9, 2018, except for the following which has been rendered not applicable by subsequent negotiation discussions:
      - The warranty period shall be the life of the contract. O&M services are to be provided for the Contract term specified, including any optional renewals DMAS elects.
      - The data layout for the Solution shall map to the ISS prescribed layout for incoming and outgoing data.
    - DMAS concurs with responses to follow-up Appeals questions on May 7, 2018 and May 15, 2018.
    - The most current cost proposal, dated March 12, 2018, sets the current price over the life of the Contract to be \$3,277,646.
  - Meeting Space Option Cost Proposal:
    - DMAS elected the Meeting Space option at the price proposed in DXC's January 19, 2017 pricing schedule document entitled "02\_RFP 2016-MCSS Appendix C- PricingSchedule-HPEVendorHosted\_01192017".
    - The price remains unchanged in any subsequent proposals.
    - The most current cost proposal, dated March 12, 2018, sets the current price over the life of the Contract to be \$39,269.
  - Contract Documentation
    - The Department provides the following documentation to represent the embodiment of all Contract negotiated terms as of the date of this letter.
      - "RFP 2016-02 MCSS - PRSS – Contract - FINAL"
      - "RFP 2016-02 MCSS - PRSS - Exhibit G - FINAL"

The Department intends that the named files above will serve as final legal instruments, excepting the modification of dates and any non-substantive typos before execution,

should negotiations progress and a final award be made to the Supplier, *unless further communications to the Supplier, after the date on this letter, indicate otherwise.*

Please submit a signed copy of this letter as acknowledgement of negotiations to this point, back to DMAS as soon as possible. **Please contact the Department as soon as possible if you identify any errors or omissions in the information provided.** Also, please acknowledge in your response whether proprietary/confidential information is included and, if applicable, provide a redacted (proprietary and confidential information removed) electronic copy in PDF format.

In order to expedite your response, please feel free to email your response by the deadline to me at [Kayla.Anderson@dmas.virginia.gov](mailto:Kayla.Anderson@dmas.virginia.gov) and copy [Chris.Banaszak@dmas.virginia.gov](mailto:Chris.Banaszak@dmas.virginia.gov) & [Whitney.Speece@dmas.virginia.gov](mailto:Whitney.Speece@dmas.virginia.gov). The original hard copies should follow-up via mail or overnight delivery to Mr. Banaszak. If you have any questions concerning this request, or the statements in this letter, please feel free to contact me at 804-371-2645.

Sincerely,

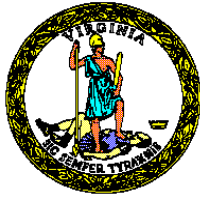


*Kayla Anderson*

DMAS Procurement & Contract Officer

Attachment

CC: Carla Russell  
Chris Banaszak  
Chris Foca  
Frank Guinan  
Mukundan Srinivasan



COMMONWEALTH of VIRGINIA  
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**RFP 2016-02 NEGOTIATION SUMMARY**

Offeror/Supplier certifies the above statement to be an accurate description of negotiated points under RFP # 2016-02 Provider Services Solution (PRSS). Offeror/Supplier certifies that DXC Technology Services, LLC understands that its selection for negotiation by DMAS, as noted in Section 20.5 of the RFP, is a further step in the RFP process, and in no way constitutes a guarantee that Offeror/Supplier will be awarded a contract, in whole or in part. Offeror/Supplier further certifies that the under-signed is legally authorized to sign on behalf of DXC Technology Services, LLC.

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Signature

Vice President

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Title

May 17, 2018

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Date

## **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. DXC's Cost proposal: "DXC 02\_RFP 2016-MCSS Appendix C-PricingSchedule-Template 03092018 v2 no links" dated March 09, 2018
2. Appendix B – SWAM Procurement and Subcontracting Monthly Report and Small Business Procurement Plan, submitted with the Cost Proposal on September 22, 2016
3. DXC Entity Letter, stating DXC will honor HPE's initial proposal, as amended through negotiations.
4. DXC's milestone payment chart: The Parties will finalize the milestones for payment along with the final work plan to be mutually agreed upon during DDI.

### **Additional – For Appeals Option Only:**

1. DXC's Cost proposal: "DXC Appeals v3 wLic02\_RFP 2016-MCSS AppC-PricingSchedule-Template 031220" dated March 12, 2018.
2. DXC Entity Letter, stating DXC will honor HPE's initial proposal, as amended through negotiations.
3. Response to DMAS clarification request for the Appeals Solution, submitted Monday May 7, 2018, email response clarifying payment and distribution of hours sent on May 15, 2018, and additional email response clarifying RightFax and additional user costs sent on May 17, 2018.
4. DXC's milestone payment chart: The Parties will finalize the milestones for payment along with the final work plan to be mutually agreed upon during DDI.

Contract 10045 Provider Services Solution (PRSS)  
Final Pricing Schedules

<b>Time Period for this Stage: June 1, 2018 to May 31, 2019</b>				
	<b>Number of Months (N)</b>	<b>Price per Month (PPM)</b>	<b>Total Price (N*PPM)</b>	<b>Calculated Percent Total Price (Total Price/Total Stage Price *100)</b>
(A.1) Fixed Monthly Payments	12	\$467,469	\$5,609,628	85%
(A.2) Quality Maintenance Payments Price	N/A	N/A	\$463,536	7%
(A.3) Licenses Price [1]	N/A	N/A	\$350,123	5%
(A.4) CMS Certification Quality Maintenance Payments Price	N/A	N/A	\$198,658	3%
<b>(A.5) Total Stage Price (Sum A.1 – A.4)</b>	N/A	N/A	\$6,621,945	100%

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

<b>Time Period for this Stage: June 1, 2019 to November 30, 2019</b>				
	<b>Number of Months (N)</b>	<b>Price per Month (PPM)</b>	<b>Total Price (N*PPM)</b>	<b>Calculated Percent Total Price (Total Price/Total Stage Price *100)</b>
(A.6) Fixed Monthly Payments	6	\$259,046	\$1,554,275	81%
(A.7) Quality Maintenance Payments Price	N/A	N/A	\$154,512	7%
(A.8) Licenses Price [1]	N/A	N/A	\$432,309	9%
(A.9) CMS Certification Quality Maintenance Payments Price	N/A	N/A	\$66,219	3%
<b>(A.10) Total Stage Price (Sum A.6 – A.9)</b>	N/A	N/A	\$2,207,315	100%

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

<b>Time Period for this Stage: December 1, 2019 to November 30, 2020</b>				
	<b>Number of Months (N)</b>	<b>Price per Month (PPM)</b>	<b>Total Price (N*PPM)</b>	<b>Calculated Percent Total Price (Total Price/Total Stage Price *100)</b>
(B.1) Fixed Monthly Payments	12	\$168,346	\$2,020,152	69%
(B.2) Licenses Price [1]	N/A	N/A	\$300,007	10%
(B.3) Configuration/ Customization Price [2]	N/A	N/A	\$597,285	21%
<b>(B.4) Total Stage Price (Sum B.1 - B.3)</b>	N/A	N/A	\$2,917,444	100%

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

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

<b>Time Period for this Stage: December 1, 2020 to November 30, 2021</b>				
	<b>Number of Months (N)</b>	<b>Price per Month (PPM)</b>	<b>Total Price (N*PPM)</b>	<b>Calculated Percent Total Price (Total Price/Total Stage Price *100)</b>
(C.1) Fixed Monthly Payments	12	\$168,346	\$2,020,152	69%
(C.2) Licenses Price[1]	N/A	N/A	\$300,007	10%
(C.3) Configuration/ Customization Price[2]	N/A	N/A	\$597,285	21%
<b>(C.4) Total Stage Price (Sum C.1 - C.3)</b>	N/A	N/A	\$2,917,444	100%

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

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



<b>Time Period for this Stage: December 1, 2021 to November 30, 2022</b>				
	<b>Number of Months (N)</b>	<b>Price per Month (PPM)</b>	<b>Total Price (N*PPM)</b>	<b>Calculated Percent Total Price (Total Price/Total Stage Price *100)</b>
(D.1) Fixed Monthly Payments	12	\$168,346	\$2,020,152	69%
(D.2) Licenses Price[1]	N/A	N/A	\$300,007	10%
(D.3) Configuration/ Customization Price[2]	N/A	N/A	\$597,285	21%
<b>(D.4) Total Stage Price (Sum D.1 - D.3)</b>	N/A	N/A	\$2,917,444	100%

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

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

<b>Time Period for this Stage: December 1, 2022 to November 30, 2023</b>				
	<b>Number of Months (N)</b>	<b>Price per Month (PPM)</b>	<b>Total Price (N*PPM)</b>	<b>Calculated Percent Total Price (Total Price/Total Stage Price *100)</b>
(E.1) Fixed Monthly Payments	12	\$168,346	\$2,020,152	69%
(E.2) Licenses Price[1]	N/A	N/A	\$300,007	10%
(E.3) Configuration/ Customization Price[2]	N/A	N/A	\$597,285	21%
<b>(E.4) Total Stage Price (Sum E.1 - E.3)</b>	N/A	N/A	\$2,917,444	100%

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

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

<b>Time Period for this Stage: December 1, 2023 to November 30, 2024</b>				
	<b>Number of Months (N)</b>	<b>Price per Month (PPM)</b>	<b>Total Price (N*PPM)</b>	<b>Calculated Percent Total Price (Total Price/Total Stage Price *100)</b>
(F.1) Fixed Monthly Payments	12	\$168,346	\$2,020,152	69%
(F.2) Licenses Price[1]	N/A	N/A	\$300,007	10%
(F.3) Configuration/ Customization Price[2]	N/A	N/A	\$597,285	21%
<b>(F.4) Total Stage Price (Sum F.1 - F.3)</b>	N/A	N/A	\$2,917,444	100%

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

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

<b>Time Period for this Stage: December 1, 2024 to November 30, 2025</b>				
	<b>Number of Months (N)</b>	<b>Price per Month (PPM)</b>	<b>Total Price (N*PPM)</b>	<b>Calculated Percent Total Price (Total Price/Total Stage Price *100)</b>
(G.1) Fixed Monthly Payments	12	\$168,346	\$2,020,152	69%
(G.2) Licenses Price[1]	N/A	N/A	\$300,007	10%
(G.3) Configuration/ Customization Price[2]	N/A	N/A	\$597,285	21%
<b>(G.4) Total Stage Price (Sum G.1 - G.3)</b>	N/A	N/A	\$2,917,444	100%

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

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

<b>Time Period for this Stage: December 1, 2025 to November 30, 2026</b>				
	<b>Number of Months (N)</b>	<b>Price per Month (PPM)</b>	<b>Total Price (N*PPM)</b>	<b>Calculated Percent Total Price (Total Price/Total Stage Price *100)</b>
(H.1) Fixed Monthly Payments	12	\$168,346	\$2,020,152	69%
(H.2) Licenses Price[1]	N/A	N/A	\$300,007	10%
(H.3) Configuration/ Customization Price[2]	N/A	N/A	\$597,285	21%
<b>(H.4) Total Stage Price (Sum H.1 - H.3)</b>	N/A	N/A	\$2,917,444	100%

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

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

<b>Time Period for this Stage: December 1, 2026 to November 30, 2027</b>				
	<b>Number of Months (N)</b>	<b>Price per Month (PPM)</b>	<b>Total Price (N*PPM)</b>	<b>Calculated Percent Total Price (Total Price/Total Stage Price *100)</b>
(I.1) Fixed Monthly Payments	12	\$168,346	\$2,020,152	69%
(I.2) Licenses Price[1]	N/A	N/A	\$300,007	10%
(I.3) Configuration/ Customization Price[2]	N/A	N/A	\$597,285	21%
<b>(I.4) Total Stage Price (Sum I.1 - I.3)</b>	N/A	N/A	\$2,917,444	100%

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

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

<b>PROVIDER SERVICES SOLUTION (PRSS) SCHEDULE J</b>		
<b>Optional Enhancements[1]</b>	<b>Price</b>	
Provider Call Center – Mandatory Pricing [3]	(J.1)	\$0
Manage Provider Appeals – Mandatory Pricing [4]	(J.2)	\$0
Provide Meeting Space - Mandatory Pricing	(J.3)	\$39,269
Additional Offeror Specific Optional Item –	(J.4)	\$0
Additional Offeror Specific Optional Item –	(J.5)	\$0
Additional Offeror Specific Optional Item –	(J.6)	\$0
Total Price for Optional Enhancements[2]	(J.7)	\$39,269
<b>(Sum J.1 – J.6)</b>		

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

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

[3] Provider Call Center option not executed by DMAS.

[4] See separate Schedule N - Appeals

# Staff Assigned	Primary Job Assignment	Total Hours	Hourly Rate[1]	Total Price
1.0 FTE	Configuration Staff	2,080	\$73.90	(K.1) \$153,717
1.0 FTE	Customization Staff	2,080	\$95.59	(K.2) \$198,817
2.0 FTE	<b>TOTAL Configuration and Customization Staff</b> <i>(sum of K.1 and K.2)</i>	<b>4,160</b>		<b>(K.3)</b> \$352,534
<b>Staff to Support 4,160 hours Configuration and Customization per year</b>				
1.6 FTE	Testing and Validation Staff	3328	\$51.58	(K.4) \$171,658
.1 FTE	Business Analyst Staff	208	\$77.30	(K.5) \$16,078
.1 FTE	Technical Writing and System Documentation Staff	208	\$56.37	(K.6) \$11,725
.5 FTE	Project Management Staff	416	\$108.87	(K.7) \$45,290
	<b>TOTAL for Configuration and Customization Support Staff</b> <i>(sum of K.4, K.5, K.6, and K.7)</i>			<b>(K.8)</b> \$244,752
	<b>TOTAL for providing 4160 hours of Configuration and Customization</b> <i>(sum of K.3 and K.8)</i>			<b>(K.9) [2]</b> \$597,285
<b>Cost of Living Assessment (COLA) Factor (Per SFY) if the Department requires the purchase of additional Enhancement hours.</b>				<b>4%</b>

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

[2] Transfer total amount to appropriate line item on Schedules B – I.



<b>License Description (Terms and Options)</b>	<b>Quantity[1]</b>	<b>Unit Price</b>	<b>Total Price</b>
Audit Logs: Splunk	50	\$ 2,923	\$ 146,142
Document Management: HP Content Manager	1	\$ 98,164	\$ 98,164
DR-Oracle: Oracle Diagnostic Pack	1	\$ 22,536	\$ 22,536
DR-Oracle: Oracle Enterprise Edition	1	\$ 19,463	\$ 19,463
DR-Oracle: Oracle Tuning	1	\$ 22,536	\$ 22,536
InRule: irAuthor	3	\$ 10,015	\$ 30,045
InRule: irCatalog	2	\$ 16,025	\$ 32,051
InRule: irServer	4	\$ 66,115	\$ 264,459
K2 Production Server License	1	\$ 290,446	\$ 290,446
Microsoft: BizTalk	8	\$ 16,844	\$ 134,751
Microsoft: Sharepoint Enterprise Server 2013 - Client Access Licenses	150	\$ 353	\$ 53,009
Microsoft: SQL Server Enterprise Edition 2012 - 2 Core Pack	14	\$ 75,987	\$1,063,822
Mobile Testing Suite: HP Unified Functional Testing Suite	3	\$ 21,047	\$ 63,140
Oracle: Oracle Diagnostic Pack	1	\$ 226,697	\$ 226,697
Oracle: Oracle Enterprise Edition	1	\$ 646,088	\$ 646,088
Oracle: Oracle Tuning	1	\$ 68,009	\$ 68,009
Security: HPE SecureData	1	\$ 32,115	\$ 32,115

Testing: HP ALM	1	\$	25,944	\$ 25,944
Testing: HP Loadrunner	1	\$	29,266	\$ 29,266
<b>Total Licensing Price</b>				
<i>(sum of L.1, L.2 L.3, L.4, L.5, and L.6)</i>				
				(L.7) \$3,268,683

[1] Transfer total amount to appropriate line item on Schedules A-I.

<b>Labor Category[1]</b>	<b>Hourly Rate</b>
Account Manager	\$ 129.11
Account Security Officer	\$ 128.12
Operational Business Manager	\$ 128.12
Product Technical Architect	\$ 110.06
Project Manager - Advanced	\$ 108.87
Testing Manager	\$ 102.79
Call Center Supervisor	\$ 99.44
Project Manager - Specialist	\$ 88.32
Testing Lead	\$ 84.49
Developer Advanced	\$ 77.41
Business Analyst Advanced	\$ 77.30
Developer	\$ 61.97
Business Analyst	\$ 59.66
Technical Writer	\$ 56.37
Trainer	\$ 55.89
Tester	\$ 51.58
Call Center Representative - Advanced	\$ 48.12
Editor	\$ 46.77
Call Center Representative	\$ 36.78

[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.

Contract 10045, Provider Services Solution (PRSS)  
Pricing Schedule Totals

Pricing Stage	Price Line #	Price
<b>Total Implementation Contract Stage 1</b> Time Period: June 1, 2018 to May 31, 2019 (Total Stage Price from Schedule A.5)	(A.5)	\$6,621,945
<b>Total Implementation Contract Stage 1</b> Time Period: June 1, 2019 to November 30, 2019 (Total Stage Price from Schedule A.10)	(A.10)	\$2,207,315
<i>(sum of A.5, A.10)</i>		\$8,829,260
<b>Total Ongoing Operations and Maintenance, Contract Stage</b> Time Period: December 1, 2019 to November 30, 2020 (Total Stage Price from Schedule B)	(B.4)	\$2,917,444
<b>Total Ongoing Operations and Maintenance, Contract Stage</b> Time Period: December 1, 2020 to November 30, 2021 (Total Stage Price from Schedule C)	(C.4)	\$2,917,444
<b>Total Ongoing Operations and Maintenance, Contract Stage</b> Time Period: December 1, 2021 to November 30, 2022 (Total Stage Price from Schedule D)	(D.4)	\$2,917,444
<b>Total Ongoing Operations and Maintenance, Contract Stage</b> Time Period: December 1, 2022 to November 30, 2023 (Total Stage Price from Schedule E)	(E.4)	\$2,917,444
<b>Total Ongoing Operations and Maintenance, Contract Stage (Option Year Renewal)</b> Time Period: December 1, 2023 to November 30, 2024 (Total Stage Price from Schedule F)	(F.4)	\$2,917,444
<b>Total Ongoing Operations and Maintenance, Contract Stage SFY (Option Year Renewal)</b> Time Period: December 1, 2024 to November 30, 2025 (Total Stage Price from Schedule G)	(G.4)	\$2,917,444
<b>Total Ongoing Operations and Maintenance, Contract Stage (Option Year Renewal)</b> Time Period: December 1, 2025 to November 30, 2026 (Total Stage Price from Schedule H)	(H.4)	\$2,917,444

<b>Total Ongoing Operations and Maintenance, Contract Stage (Option Year Renewal)</b> <b>Time Period: December 1, 2026 to November 30, 2027</b> <b>(Total Stage Price from Schedule I)</b>	<b>(I.4)</b>	<b>\$2,917,444</b>
<b>Operations and Maintenance Subtotal</b> <i>(Sum B.4, C.4, D.4, E.4, F.4, G.4, H.4 and I.4)</i>	<b>(O&amp;M)</b>	<b>\$23,339,552</b>
<b>Total Price Bid[1]</b> <i>(sum of A.5, A.10 and O&amp;M)</i>	<b>(Total)</b>	<b>\$32,168,812</b>

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

Contract 10045 Provider Services Solution (PRSS)  
Appeals Option Pricing

Pricing Stage	Price Line #	Price
<b>Total Implementation Contract Stage 1</b> Time Period: June 1, 2018 to November 30, 2018 (Total Stage Price from Schedule A.5)	(A.5)	\$962,036
<b>Total Implementation Contract Stage 1</b> Time Period: (Total Stage Price from Schedule A.10)	(A.10)	\$0
<i>(sum of A.5, A.10)</i>		\$962,036
<b>Total Ongoing Operations and Maintenance, Contract Stage</b> Time Period: December 1, 2018 to November 30, 2019 (Total Stage Price from Schedule B.1)	(B.4)	\$257,290
<b>Total Ongoing Operations and Maintenance, Contract Stage</b> Time Period: December 1, 2019 to November 30, 2020 (Total Stage Price from Schedule B.2)	(B.4)	\$257,290
<b>Total Ongoing Operations and Maintenance, Contract Stage</b> Time Period: December 1, 2020 to November 30, 2021 (Total Stage Price from Schedule C)	(C.4)	\$257,290
<b>Total Ongoing Operations and Maintenance, Contract Stage</b> Time Period: December 1, 2021 to November 30, 2022 (Total Stage Price from Schedule D)	(D.4)	\$257,290
<b>Total Ongoing Operations and Maintenance, Contract Stage</b> Time Period: December 1, 2022 to November 30, 2023 (Total Stage Price from Schedule E)	(E.4)	\$257,290
<b>Total Ongoing Operations and Maintenance, Contract Stage (Option Year Renewal)</b> Time Period: December 1, 2023 to November 30, 2024 (Total Stage Price from Schedule F)	(F.4)	\$257,290
<b>Total Ongoing Operations and Maintenance, Contract Stage SFY (Option Year Renewal)</b> Time Period: December 1, 2024 to November 30, 2025 (Total Stage Price from Schedule G)	(G.4)	\$257,290

<b>Total Ongoing Operations and Maintenance, Contract Stage (Option Year Renewal)</b> <b>Time Period: December 1, 2025 to November 30, 2026</b> <b>(Total Stage Price from Schedule H)</b>	(H.4)	\$257,290
<b>Total Ongoing Operations and Maintenance, Contract Stage (Option Year Renewal)</b> <b>Time Period: December 1, 2026 to November 30, 2027</b> <b>(Total Stage Price from Schedule I)</b>	(I.4)	\$257,290
<b>Operations and Maintenance Subtotal</b> <i>(Sum B.4, C.4, D.4, E.4, F.4, G.4, H.4 and I.4)</i>	(O&M)	\$2,315,610
<b>Total Price Bid[1]</b> <i>(sum of A.5, A.10 and O&amp;M)</i>	(Total)	\$3,277,646

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

Contract 10045 Provider Services Solution (PRSS)  
Combined Pricing Schedule Totals (Solution + Appeals Option)

Pricing Stage	Price Line #	Price
<b>Total Implementation Contract Stage 1</b> <b>Time Period: June 1, 2018 to May 31, 2019</b> (Total Stage Price from Schedule A.5 and Schedule N - Appeals A.5)	(A.5)	\$7,583,981
<b>Total Implementation Contract Stage 1</b> <b>Time Period: June 1, 2019 to November 30, 2019</b> (Total Stage Price from Schedule A.10 and Schedule N - Appeals A.10)	(A.10)	\$2,207,315
<i>(sum of A.5, A.10)</i>		<b>\$9,791,296</b>
<b>Total Ongoing Operations and Maintenance, Contract Stage</b> <b>Time Period: December 1, 2018 to November 30, 2019</b> (Total Stage Price from Schedule B.1 and Schedule N - Appeals B.1)	(B.4)	\$257,290
<b>Total Ongoing Operations and Maintenance, Contract Stage</b> <b>Time Period: December 1, 2019 to November 30, 2020</b> (Total Stage Price from Schedule B.2 and Schedule N - Appeals B.2)	(B.4)	\$3,174,734
<b>Total Ongoing Operations and Maintenance, Contract Stage</b> <b>Time Period: December 1, 2020 to November 30, 2021</b> (Total Stage Price from Schedule C and Schedule N - Appeals C)	(C.4)	\$3,174,734
<b>Total Ongoing Operations and Maintenance, Contract Stage</b> <b>Time Period: December 1, 2021 to November 30, 2022</b> (Total Stage Price from Schedule D and Schedule N - Appeals D)	(D.4)	\$3,174,734
<b>Total Ongoing Operations and Maintenance, Contract Stage</b> <b>Time Period: December 1, 2022 to November 30, 2023</b> (Total Stage Price from Schedule E and Schedule N - Appeals E)	(E.4)	\$3,174,734
<b>Total Ongoing Operations and Maintenance, Contract Stage (Option Year Renewal)</b> <b>Time Period: December 1, 2023 to November 30, 2024</b> (Total Stage Price from Schedule F and Schedule N - Appeals F)	(F.4)	\$3,174,734



<b>Total Ongoing Operations and Maintenance, Contract Stage SFY (Option Year Renewal)</b> <b>Time Period: December 1, 2024 to November 30, 2025</b> <b>(Total Stage Price from Schedule G and Schedule N - Appeals G)</b>	(G.4)	\$3,174,734
<b>Total Ongoing Operations and Maintenance, Contract Stage (Option Year Renewal)</b> <b>Time Period: December 1, 2025 to November 30, 2026</b> <b>(Total Stage Price from Schedule H and Schedule N - Appeals H)</b>	(H.4)	\$3,174,734
<b>Total Ongoing Operations and Maintenance, Contract Stage (Option Year Renewal)</b> <b>Time Period: December 1, 2026 to November 30, 2027</b> <b>(Total Stage Price from Schedule I and Schedule N - Appeals I)</b>	(I.4)	\$3,174,734
<b>Operations and Maintenance Subtotal</b> <i>(Sum B.4, C.4, D.4, E.4, F.4, G.4, H.4 and I.4)</i>	(O&M)	\$25,655,162
<b>SubTotal Price Bid[1]</b> <i>(sum of A.5, A.10 and O&amp;M)</i>	(SubTotal)	\$35,446,458
<b>Total Price for Optional Enhancements</b> <b>(Sum J.1 - J.6)</b>	(J.7)	\$39,269
<b>Total Price</b> <b>(sum of A.5, A.10, O&amp;M and J.7)</b>	Total	\$35,485,727



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

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

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

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

### B. SWAM PROCUREMENT PLAN

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

Offeror Name: HP Enterprise Services, LLC

Preparer Name: HP Enterprise Services, LLC

Date: September 23, 2016

### INSTRUCTIONS

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



**SECTION A**

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

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

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

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



**Virginia Medicaid Enterprise System: Modular Core Services Solutions**

**SECTION B**

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

Small Business Name & Address DMBE Certificate #	Status if Small Business is also: Women (W), Minority (M) Service-Disabled Veteran (D), Micro Business (MB)	Contact Person, Telephone & Email	Type of Goods and/or Services	Planned Involvement During Initial Period of the Contract	Planned Contract Dollars During Initial Period of the Contract
Astyra Corporation 411 E. Franklin St., Suite 105, Richmond VA 23219 DMBE # 7160	Minority Small Business	Mark Thompson, (804) 433-1104 mthompson@astyra.com	Staffing and project site	QA Manager, provider enrollment staff, project site	\$8,785,441.00
					<b>Totals \$ 8,785,441.00</b>



March 12, 2018

Mr. Christopher M. Banaszak  
DMAS Contract Manager  
Department of Medical Assistance Services  
600 East Broad Street, Suite 1300  
Richmond, VA 23219

Re: DXC entity consolidation: Enterprise Services LLC assignment to DXC  
Technology Services LLC

**Scott J. Mack**

Vice President  
US State Health and Human Services

2401 NW 23<sup>rd</sup> Street  
Oklahoma City, OK 73107

**M** +1.405.923.7872

Scott.mack@dxc.com

**www.dxc.technology**

Dear Mr. Banaszak:

As you are aware, on September 22, 2016, HP Enterprise Services, LLC (HPE) submitted a proposal to the Virginia Department of Medical Assistance ("DMAS") in response to Request for Proposal ("RFP") No. 2016-02.

On April 3, 2017, we completed the merger of Enterprise Services LLC ("ES") with Computer Sciences Corporation ("CSC") and launched DXC Technology Company ("DXC"). Today, we are the world's leading independent, end-to-end IT services company, leading our clients on their digital transformation journeys. To deliver the full capabilities of DXC to our clients and partners, we are focusing on further integration of our legacy businesses. Previously, the legacy ES and CSC businesses operated as separate legal entities, with separate internal systems under DXC. To simplify and improve our client, partner and supplier contracting processes, DXC underwent an entity consolidation effort. DXC Technology Services LLC, a legal operating entity under DXC Technology, has been created and registered in the U.S.

It is important to note that the new DXC entity remains a wholly-owned subsidiary of our ultimate parent, DXC Technology Company. Additionally, the entity consolidation program does not impact or change our executive leadership teams, account personnel or delivery teams that would provide services to DMAS. To that end, DXC Technology Services LLC has the full backing and support of DXC in connection with meeting the contractual responsibilities associated with this opportunity, should DMAS award a contract to DXC Technology Services LLC in response to RFP No. 2016-02.

We are available at your convenience to answer any questions that you may have.

Sincerely,

A handwritten signature in black ink that reads "Scott J. Mack".

Scott J. Mack  
Vice President, US State Health and Human Services

**EXHIBIT C – ESCROW AGREEMENT**



<b>Effective Date</b>	
<b>Deposit Account Number</b>	
*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 DXC Technology Services LLC (the “**Depositor**”), and by 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’s 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](http://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 entered into that certain Contract No. 10045 (“**Contract**”) conveying certain 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 the materials described in Exhibit D attached to this Agreement, (“**Deposit Material**”) to Iron Mountain within ninety (90) days of the Effective Date; (ii) make any required updates to the Deposit Material during the Term (as defined below) of this Agreement; and (iii) 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. For the avoidance of doubt, all material deposited with Iron Mountain in accordance with the terms of this Agreement shall be considered Deposit Material and Iron Mountain’s sole responsibility, with respect to the initial inspection of the Deposit Material, is to ensure that the materials deposited correspond to the documentation supplied in the Exhibit B, in accordance with Section 4(b) of the Agreement.
- (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.
- (b) It shall be solely the Beneficiary’s responsibility to monitor whether a deposit or deposit update has been accepted by Iron Mountain.

**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. 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 requests 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 carriers 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) Beneficiary may submit a verification Work Request to Iron Mountain for one or more of the Services defined in Exhibit A attached to this Agreement and Depositor consents to Iron Mountain's performance of any level(s) of such Services. Upon request by Iron Mountain and in support of Beneficiary'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.
- (c) Iron Mountain will work with a Party who submits any verification Work Request for Deposit Material covered under this Agreement to either fulfill a standard verification Services Work Request or develop a custom Statement of Work ("SOW"). Iron Mountain and the requesting Party will mutually agree in writing to an SOW on terms and conditions that include but are not limited to: description of Deposit Material to be tested; description of verification testing; requesting Party responsibilities; Iron Mountain responsibilities; Service Fees; invoice payment instructions; designation of the paying Party; designation of authorized SOW representatives for both the requesting Party and Iron Mountain with name and contact information; and description of any final deliverables prior to the start of any fulfillment activity. Provided that the requesting Party has identified in the verification Work Request or SOW that the Deposit Material is subject to the regulations of the International Traffic in Arms Regulations (22 CFR 120) (hereinafter "ITAR"), Iron Mountain shall ensure that any subcontractor who is granted access to the Deposit Material for the performance of verification Services shall be a U.S. Person as defined in 8 U.S.C. 1101(a)(20) or who is a protected person as defined in 8 U.S.C. 1324b(a)(3). After the start of fulfillment activity, each SOW may only be amended or modified in writing with the mutual agreement of both Parties, in accordance with the change control procedures set forth in the SOW. If the verification Services extend beyond those described in Exhibit A, the Depositor shall be a necessary Party to the SOW governing the Services.

#### 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 ("**Service Fees**"). All Service Fees are due within sixty (60) calendar days from the receipt of invoice in U.S. currency and are non-refundable. Iron Mountain may update Service Fees with a ninety (90) calendar day written notice to the Paying Party during the Term of this Agreement (as defined below). 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 Contract or this Agreement, Iron Mountain is entitled to be paid all Service Fees that accrued 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; or (iv) 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 Dates supplied by Iron Mountain and specified above shall be the date Iron Mountain sets up the escrow account.
- (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 parties 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 \$100,000 (USD).

**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 Massachusetts, 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 divided equally and paid by Depositor and Beneficiary.
- (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 Boston, Massachusetts, 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 each represent and covenant that upon the Effective Date of this Agreement and throughout the term of this Agreement, that: (i) it is not identified on any restricted party lists; or located in countries identified on any restricted country lists; or using the Deposit Material or the Services for any restricted end uses; including those promulgated by the U.S. Departments of State, Commerce and Treasury; (ii) it is and shall remain compliant with all laws and regulations applicable to its performance under this Agreement, including, but not limited to ITAR, any export control and economic sanctions or government regulations of any country from or to which the Deposit Material may be delivered in accordance with the provisions of this Agreement; and (iii) it will not take any action that will cause Iron Mountain to be in violation of such laws and regulations, and will not require Iron Mountain to directly or indirectly take any action that might cause it to be in violation of such laws and regulations. Depositor will not provide Iron Mountain with Deposit Material that is subject to export controls and controlled at a level other than EAR99/AT. 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.
- (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		BENEFICIARY	
Signature		Signature	<i>Jennifer S. Lee</i>
Print Name		Print Name	JENNIFER S. LEE, M.D.
Title		Title	Director
Date		Date	7/2/18

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.	
Signature	
Print Name	
Title	
Date	

Approved as to IPM Operational Content:  
Iron Mountain Operations



Name: John Styslinger, Contracts Specialist  
Date: June 29, 2018

(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.

<b>DEPOSITOR (Required information)</b>		<b>BENEFICIARY (Required information)</b>	
<b>Print Name</b>	Alan Fowler	<b>Print Name</b>	Mukundan Srinivasan
<b>Title</b>	Account Executive	<b>Title</b>	IM Director
<b>Email Address</b>	<a href="mailto:Alan.fowler@dxc.com">Alan.fowler@dxc.com</a>	<b>Email Address</b>	<a href="mailto:Mukundan.Srinivasan@dmas.virginia.gov">Mukundan.Srinivasan@dmas.virginia.gov</a>
<b>Street Address</b>	411 E. FRANKLIN ST, Suite 105	<b>Street Address</b>	600 East Broad Street
<b>City</b>	Richmond	<b>City</b>	Richmond
<b>State/Province</b>	VA	<b>State/Province</b>	VA
<b>Postal/Zip Code</b>	23219	<b>Postal/Zip Code</b>	23219
<b>Country</b>	United States	<b>Country</b>	United States
<b>Phone Number</b>	804.512.8465	<b>Phone Number</b>	804-371-6369
<b>Fax Number</b>	N/A	<b>Fax Number</b>	N/A

**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 or contact at the address set forth below. Incomplete information may result in a delay of processing.

<b>Company Name</b>	DXC Technology Services LLC
<b>Print Name</b>	Accounts Payable: Attn: Alan Fowler Electronic copy to <a href="http://www.tungstennetwork.com/hpesplit">www.tungstennetwork.com/hpesplit</a>
<b>Title</b>	Account Executive
<b>Email Address</b>	<a href="mailto:Alan.fowler@dxc.com">Alan.fowler@dxc.com</a> Electronic copy to <a href="http://www.tungstennetwork.com/hpesplit">www.tungstennetwork.com/hpesplit</a>
<b>Street Address</b>	350 Chardon Ave, Suite 810 Torre Chardon
<b>City</b>	San Juan
<b>State/Province</b>	Puerto Rico
<b>Postal/Zip Code</b>	00918
<b>Country</b>	United States
<b>Phone Number</b>	804.512.8465
<b>Fax Number</b>	N/A
<b>Purchase Order #</b>	N/A

**IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.**

All notices should be sent to [ipmclientservices@ironmountain.com](mailto:ipmclientservices@ironmountain.com) OR Iron Mountain Intellectual Property Management, Inc., Attn: Client Services, 6111 Live Oak Parkway, Norcross, Georgia, 30093, USA. Telephone: 800-875-5669. Facsimile: 770-239-9201

**Exhibit A**  
**Escrow Services Fee Schedule – Work Request**

Deposit Account Number

Service	Service Description - Three-Party Escrow Service Agreement	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.	\$2,600	
<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.		\$1,200
<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.		\$900
<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 the requesting Party regarding the Deposit Material. Deposit must be provided on CD, DVD-R, or deposited electronically.	\$3,000	N/A
<input checked="" type="checkbox"/> Level 1 Inventory and Analysis Test (includes File List Test)	Iron Mountain will perform one (1) Inventory and Analysis Test on the specified deposit, which includes the outputs of the File List Test, identifying the presence/absence of build, setup and design documentation (including the presence or absence of a completed escrow deposit questionnaire), and identifying materials required to recreate the Depositor's application development and production environments. Output includes a report that includes compile and setup documentation, file classification tables and file listings. The report will list required software development materials, including, without limitation, required source code languages and compilers, third-party software, libraries, operating systems, and hardware, and Iron Mountain's analysis of the deposit. A final report will be sent to the requesting Party regarding the Deposit Material.	\$6,000 or based on SOW if custom work required	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 checked="" type="checkbox"/> Custom Contract Fee	Custom contract changes to Iron Mountain templates are subject to the Custom Contract Fee, which covers the review and processing of custom or modified contracts.	\$900	N/A
<b>Additional Verification Services (Fees based on Statement of Work)</b>			
Level 2 Deposit Compile Test	Iron Mountain will fulfill a Statement of Work (SOW) to perform a Deposit Compile Test, which includes the outputs of the Level 1 - Inventory and Analysis Test, plus recreating the Depositor's software development environment, compiling source files and modules, linking libraries and recreating executable code, providing a pass/fail determination, and creation of comprehensive compilation documentation with a final report sent to the Paying Party regarding the Deposit Material. The requesting Party and Iron Mountain will agree on a custom SOW prior to the start of fulfillment. A completed escrow deposit questionnaire is required for execution of this test.		
Level 3 Binary Comparison Test	Iron Mountain will fulfill a Statement of Work (SOW) to perform one Binary Comparison Test - Binary Comparison, which includes the outputs of the Level 2 test, a comparison of the executable files built from the Deposit Compile Test to the actual executable files in use by the Beneficiary to ensure a full binary-level match, with a final report sent to the Requesting Party regarding the Deposit Material. The Paying Party and Iron Mountain will agree on a custom SOW prior to the start of fulfillment. A completed escrow deposit questionnaire is required for execution of this test.		
Level 4 Full Usability Test	Iron Mountain will fulfill a Statement of Work (SOW) to perform one Deposit Usability Test - Full Usability, which includes which includes the outputs of the Level 1 and Level 2 tests (if applicable). Iron Mountain will confirm that the deposited application can be setup, installed and configured and, when installed, will execute functional tests, based on pre-determined test scripts provided by the Parties, and create comprehensive setup and installation documentation. A final report will be sent to the Paying Party regarding the Deposit Material. The Paying Party and Iron Mountain will agree on a custom SOW prior to the start of fulfillment. A completed escrow deposit questionnaire is required for execution of this test.		

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	
Signature	
Print Name	
Title	
Date	

**IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.**

All Work Requests should be sent to [ipmclientservices@ironmountain.com](mailto:ipmclientservices@ironmountain.com) OR Iron Mountain Intellectual Property Management, Inc., Attn: Client Services, 6111 Live Oak Parkway, Norcross, Georgia, 30093, USA. Telephone: 800-875-5669. Facsimile: 770-239-9201

## Exhibit B

### Deposit Material Description

(This document must accompany each submission of Deposit Material)

<b>Company Name</b>	<b>Deposit Account Number</b>
<b>Deposit Name</b>	<b>Deposit Version</b>

(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.

<b>Encryption tool name</b>	<b>Version</b>
<b>Hardware required</b>	
<b>Software required</b>	
<b>Other required information</b>	

#### 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.
<b>Print Name</b>	<b>Name</b>
<b>Date</b>	<b>Date</b>
<b>Email Address</b>	
<b>Telephone Number</b>	

**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  
 6111 Live Oak Parkway  
 Norcross, GA 30093  
 Telephone: 800-875-5669  
 Facsimile: 770-239-9201

## Exhibit C Release of Deposit Material

Deposit Account Number	
------------------------	--

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 Contract, for a period of sixty (60) days and in the failure to cure such breach within the applicable cure period set forth in the Contract between the Depositor and Beneficiary; or
- (ii) Failure of the Depositor to operate 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 disputes 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**

### **Deposit Material**

As solely between the Depositor and Beneficiary, Depositor shall deposit all work product developed under this contract for DMAS, specifically:

- (i) Project Deliverables;
- (ii) Technical Documentation
- (iii) User Documentation; and
- (iv) Procedure Manuals

Depositor is offering a SaaS service, therefore, source code is not applicable as work products and is not included in Deposit Material. However, specific customization/configurations, which are initiated exclusively for the benefit of DMAS/Commonwealth under the Contract are deemed Work Product.

For the avoidance of doubt, all material deposited with Iron Mountain in accordance with the terms of this Agreement shall be considered Deposit Material and Iron Mountain's sole responsibility, with respect to the initial inspection of the Deposit Material, is to ensure that the materials deposited correspond to the documentation supplied in the Exhibit B, in accordance with Section 4(b) of the Agreement.

**EXHIBIT D – END USER LICENSING AGREEMENT (For Reference Only)**

**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: \_\_\_\_\_

Scott J. Mack, Vice President

Printed Name: \_\_\_\_\_

DXC Technology, LLC

Organization: \_\_\_\_\_

May 15, 2018

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

**EXHIBIT F – DMAS BUSINESS ASSOCIATE AGREEMENT (BAA)**

EXHIBIT F  
CONTRACT 10045  
PROVIDER SERVICES SOLUTION (PRSS)



***COMMONWEALTH of VIRGINIA***  
***Department of Medical Assistance Services***

JENNIFER S. LEE, M.D.  
DIRECTOR

SUITE 1300  
600 EAST BROAD ST  
RICHMOND, VA 23219

**BUSINESS ASSOCIATE AGREEMENT (BAA) to Contract # 10045  
PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION**

General Conditions

This BAA (“Agreement” or “BAA”) is made as of June 11, 2018 by the Department of Medical Assistance Services (“Covered Entity”), with offices at 600 East Broad Street, Richmond, Virginia, 23219, and DXC Technology Services LLC (“Business Associate”), with an office at 1775 Tysons Boulevard, Suite 900, Tysons, Virginia 22102. 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](mailto:hipaaprivacy@dmass.virginia.gov)

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

Contact: Mukundan Srinivasan  
Department of Medical Assistance Services  
600 East Broad Street  
Richmond, Virginia 23219

## III. Special Provisions to General Conditions

1. Uses and Disclosure of PHI by Business Associate. The Business Associate
  - a. May use or disclose PHI received from the Covered Entity, if necessary, to carry out its legal responsibilities and for the proper management and administration of its business.
  - b. Shall not use PHI otherwise than as expressly permitted by this Agreement, or as required by law.
  - c. Shall have a signed confidentiality agreement with all individuals of its workforce who have access to PHI.

- d. Shall not disclose PHI to any member of its workforce except to those persons who have authorized access to the information, and who have signed a confidentiality agreement.
- e. Shall ensure that any agents and subcontractors to whom it provides PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, agree in writing to all the same restrictions, terms, special provisions and general conditions in this BAA that apply to Business Associate. In addition, Business Associate shall ensure that any such subcontractor or agent agrees to implement reasonable and appropriate safeguards to protect Covered Entity's PHI. In instances where one DMAS Business Associate is required to access DMAS PHI from another DMAS Business Associate, the first DMAS Business Associate shall enter into a business associate agreement with the second DMAS Business Associate.
- f. Shall provide Covered Entity access to its facilities used for the maintenance and processing of PHI, for inspection of its internal practices, books, records, and policies and procedures relating to the use and disclosure of PHI, for purpose of determining Business Associate's compliance with this BAA.
- g. Shall make its internal practices, books, records, and policies and procedures relating to the use and disclosure of PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary of Department of Health and Human Services (DHHS) or its designee and provide Covered Entity with copies of any information it has made available to DHHS under this section of this BAA.
- h. Shall not directly or indirectly receive remuneration in exchange for the provision of any of Covered Entity's PHI, except with the Covered Entity's consent and in accordance with 45 CFR 164.502.
- i. Shall make reasonable efforts in the performance of its duties on behalf of Covered Entity to use, disclose, and request only the minimum necessary PHI reasonably necessary to accomplish the intended purpose with the terms of this Agreement.
- j. Shall comply with 45 CFR 164.520 regarding Notice of privacy practices for protected health information.

2. Safeguards - Business Associate shall

- a. Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity as required by the HIPAA Security Rule, 45 CFR Parts 160, 162, and 164 and the HITECH Act.
- b. Include a description of such safeguards in the form of a Business Associate Data Security Plan.
- c. In accordance with the HIPAA Privacy Rule, the Security Rule, and the guidelines issued by the National Institute for Standards and Technology (NIST), Business Associate shall use commercially reasonable efforts to secure Covered Entity's PHI through technology safeguards that render PHI unusable, unreadable and indecipherable to individuals unauthorized to access such PHI.
- d. Business Associate shall not transmit PHI over the Internet or any other insecure or open communication channel, unless such information is encrypted or otherwise safeguarded using procedures no less stringent than described in 45 CFR 164.312(e).
- e. Business Associate shall cooperate and work with Covered Entity's contract administrator to establish TLS-connectivity to ensure an automated method of the secure exchange of email.

3. Accounting of Disclosures - Business Associate shall

- a. Maintain an ongoing log of the details relating to any disclosures of PHI outside the scope of this Agreement that it makes. The information logged shall include, but is not limited to;
  - i. the date made,



- ii. the name of the person or organization receiving the PHI,
  - iii. the recipient's (member) address, if known,
  - iv. a description of the PHI disclosed, and the reason for the disclosure.
- b. Provide this information to the Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

4. Sanctions - Business Associate shall

- a. Implement and maintain sanctions for any employee, subcontractor, or agent who violates the requirements in this Agreement or the HIPAA privacy regulations.
- b. As requested by Covered Entity, take steps to mitigate any harmful effect of any such violation of this agreement.

5. Business Associate also agrees to all of the following:

- a. In the event of any impermissible use or disclosure of PHI or breach of unsecured PHI made in violation of this Agreement or any other applicable law, the Business Associate shall notify the DMAS Privacy Officer
  - i. On the first day on which such breach is known or reasonably should be known by Business Associate or an employee, officer or agent of Business Associate other than the person committing the breach, and
  - ii. Written notification to DMAS Privacy Officer shall include the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Contractor to have been, accessed, acquired, used or disclosed during the breach. Business Associate shall confer with DMAS prior to providing any notifications to the public or to the Secretary of HHS.
- b. Breach Notification requirements.
  - i. In addition to requirements in 5.a above, in the event of a breach or other impermissible use or disclosure by Business Associate of PHI or unsecured PHI, the Business Associate shall be required to notify in writing all affected individuals to include,
    - a) a brief description of what happened, including the date of the breach and the date the Business Associate discovered the breach;
    - b) a description of the types of unsecured PHI that were involved in the breach;
    - c) any steps the individuals should take to protect themselves from potential harm resulting from the breach;
    - d) a brief description of what Business Associate is doing to investigate the breach, mitigate harm to individuals, and protect against any future breaches, and, if necessary,
    - e) Establishing and staffing a toll-free telephone line to respond to questions.
  - ii. Business Associate shall be responsible for all costs associated with breach notifications requirements in 5b, above.
  - iii. Written notices to all individuals and entities shall comply with 45 CFR 164.404(c)(2), 164.404(d)(1), 164.406, 164.408 and 164.412.

6. Amendment and Access to PHI - Business Associate shall

- a. Make an individual's PHI available to Covered Entity within ten (10) days of an individual's request for such information as notified by Covered Entity.
- b. Make PHI available for amendment and correction and shall incorporate any amendments or corrections to PHI within ten (10) days of notification by Covered Entity per 45 CFR 164.526.

- c. Provide access to PHI contained in a designated record set to the Covered Entity, in the time and manner designated by the Covered Entity, or at the request of the Covered Entity, to an individual in order to meet the requirements of 45 CFR 164.524.

#### 7. Termination

- a. Covered Entity may immediately terminate this agreement if Covered Entity determines that Business Associate has violated a material term of the Agreement.
- b. This Agreement shall remain in effect unless terminated for cause by Covered Entity with immediate effect, or until terminated by either party with not less than thirty (30) days prior written notice to the other party, which notice shall specify the effective date of the termination; provided, however, that any termination shall not affect the respective obligations or rights of the parties arising under any Documents or otherwise under this Agreement before 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/ DXC Technology Services LLC  
Master BAA Agreement Contract 10045

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

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

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

Contact: Mukundan Srinivasan  
Department of Medical Assistance Services  
600 East Broad Street  
Richmond, Virginia 23219  
(804) 371-6369  
[Mukundan.Srinivasan@dmas.virginia.gov](mailto:Mukundan.Srinivasan@dmas.virginia.gov)

Contact: Executive Account Director  
Name: Scott Mack  
Address: 2401 NW 23rd Street, Suite 11; Oklahoma City, OK 73107  
Phone Number: +1 405 923 7872  
Email Address: [scott.mack@dx.com](mailto:scott.mack@dx.com)

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

The following represent our proposed Key staff and will be initial staff that will required access to Covered Entity's PHI:

- Scott Mack – Executive Account Director
- Jeff Jacobs – Account Manager
- Mike Frost – Project Manager
- Amy Strait – Certification Manager
- Kelly Norton - Operational Business Manager
- George Bjorkman – Systems/Technical Manager
- Cindy Daniel – QA Manager
- Raymond Chin – Testing Manager
- Cindy Kennedy – Conversion Manager

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

For the Appeals solution, we expect access is required to the following data elements:

- Member demographic data
- Member data submitted via Appeals solution
- Member claims data
- Provider and relevant staff SSNs (for purpose of processing applications)

For the PRSS solution, we expect access is required to the following data elements:

- Provider demographic data
- Provider SSNs and related staff SSNs (e.g. owner, managing partner, records custodian)

d. Purposes for which such data is required.

The data is required to fulfill the scope of work requirements of Contract 10045.

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 (BA) intends to use, access or disclose data is defined in the contract 10045 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, Table Of Service Levels, Response And Resolution Times and Escalation Procedures For Licensed Services**

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

These additional terms and conditions for provision of Cloud Services as part of Supplier's contractual obligations for an overall solution provided by the Supplier are in support of and incorporated herewith under Contract No.10045. This Exhibit ("Exhibit") sets forth additional terms and conditions under which Supplier shall provide such Licensed Services ("Licensed Services") to Department of Medical Assistance Services (DMAS).

**1. DEFINITIONS**

**A. Acceptance**

Successful delivery and performance by the Supplier of its contractual commitments at the location(s) designated in the Contract, including completed Acceptance testing in conformance with Section 10 and the Requirements of the Contract.

**B. Application**

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

**C. Application Users**

Application Users shall include employees of DMAS, independent contractors engaged by DMAS, or entities contracting with DMAS for services, as well as DMAS customers, suppliers, members of the general public, and other entities with whom DMAS may find it necessary or desirable to process or communicate electronically in pursuit of its business.

**D. Content**

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

**E. Licensed Services**

The operation of the Application and the necessary operating system software, hardware and utilities on Supplier's host computer system, furnishing Supplier Product to Application Users, storing Content and making the Application, Content, and Supplier Product available to Application User(s) via the Web Site, as necessary for Supplier to provide the Services, based on the Requirements as more fully described in Exhibit A.

**F. Supplier Product**

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

**G. Update**

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

**H. VITA**

Virginia Information Technologies Agency.

**I. Web Site**

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

## 2. TERM AND TERMINATION: SCALABILITY

DMAS may make a written request to increase or decrease the scope (e.g., size and processing capacity of the Solution) of Licensed Services (“revised usage”) under a change order to the Contract. The revised usage, within the parameters of Exhibit A and B, shall be effective not more than one (1) business hour following the request, or as otherwise agreed to by the Parties. For purposes of revised usage within the parameters above, , a written notice may include an e-mail or the use of a Supplier-provided provisioning website by DMAS designated administrator. If the revised usage is not within the parameters of Exhibit A and Exhibit B, such revised usage would go through the Change Order Process of Section 12.D of the Contract and email communication is not sufficient.

## 3. DESCRIPTION OF LICENSED SERVICES

During the term of this Contract, Supplier hereby agrees to host the Application(s) listed and described in Exhibit A and as specified in the Contract on servers owned, operated, housed, and maintained by Supplier and shall make such Application(s) available to DMAS designated Application Users through the Internet. Supplier has acquired any and all license rights in the Application(s) necessary and appropriate for Supplier to provide the Licensed Services as obligated by the Contract.

Supplier hereby grants, if applicable, to DMAS/the Commonwealth and its Application Users a non-exclusive, transferable within the Commonwealth, worldwide license to access and use by any method the Application during the term of the Contract, as specified in Section 6 of the Contract. The license fee for the rights shall be as set forth in Exhibit B, and shall apply regardless of access mode.

DMAS is an agency, as defined by §2.2-2006of the *Code of Virginia*, therefore, the license, if applicable, shall be held by the Commonwealth.

Notwithstanding any other provision or other unilateral license terms which may be issued by Supplier after the Effective Date of the Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of this Contract for Licensed Services, including access to the Application(s), or the fact that such other agreement may be presented to DMAS or its Application Users at the time of accessing the Application(s) (“click wrap”), the terms and conditions set forth in this Contract and any amendments or modifications thereto shall supersede and govern licensing and use of all products and services hereunder.

## 4. SUPPLIER RESPONSIBILITIES

### A. Standard Application Responsibilities

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

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

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

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

iv). The Application will be made available to DMAS and its designated Application Users twenty-four (24) hours a day, seven (7) days a week (“Uptime”) less Excusable Downtime. For the purposes of this Contract, “Excusable Downtime” is defined as that period of time when the Licensed Services are not available to DMAS or its Application Users due to scheduled network, hardware or service maintenance and/or upgrades. Except in cases of emergency, DMAS shall be provided a two (2) business day advance notification of such maintenance and/or upgrade. In cases of emergency, Supplier will use its best efforts to notify DMAS of a planned Downtime as soon as



practicable. Maintenance or upgrades are not to exceed thirty-six (36) hours in duration in a single month and cannot occur Monday through Friday, between the hours of 6:00 a.m. and 8:00 p.m. Eastern Time. 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). The Application will be available for use at least ninety-nine percent (99%) of the total time during each month, excluding Excusable Downtime.

vii). If non-Excusable Downtime exceeds the parameters listed above, Supplier will credit to DMAS the applicable credit set forth in Attachment A to this Exhibit G. 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. 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 degrading performance thereof.

In addition, in the manner agreed to by the Parties, Updates, release versioning updates & improvements, etc. will be provided to DMAS at no additional cost. Customizations and configurations that result in a substantive change in scope may be handled through the Change order process in 12.D of the Contract. Supplier shall provide access to additional Updates, features, and functionalities of the Application as are provided by Supplier to other customers of Supplier who require functionality similar to that of the Application provided to DMAS. All such additional features and functionality, where reasonably necessary, shall be accompanied by updated Documentation, whether in hard copy format or distributed electronically via email or the Supplier website. Notwithstanding the provisions of this Section and except as agreed to in writing by DMAS and Supplier, nothing in the Contract shall oblige Supplier to undertake any modifications to the Application, and all such modifications are at Supplier's sole discretion whether suggested by an DMAS or another party.

#### **B. Ancillary Responsibilities**

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

#### **C. Subcontractors**

It is understood that Supplier may utilize subcontractors to provide integral components of the Licensed Services and Application; however, except for those so named at time of Contract award, Supplier shall not use new or replacement subcontractors to perform or provide integral

components of the Licensed Services or Application during performance of this Contract without advance written notification to and approval by DMAS.

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

If any part of this Contract is supported in whole or in part with federal funds, Supplier shall not subcontract any Services to any subcontractor that is a party excluded from Federal Procurement and Nonprocurement Programs. In no event shall Supplier subcontract with any subcontractor which is debarred by the Commonwealth of Virginia or which owes back taxes to the Commonwealth and has not made arrangements with the Commonwealth for payment of such back taxes.

## **5. DMAS RESPONSIBILITIES**

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

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

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

ii). DMAS shall have the right to add, change access for, or delete USERIDs at its sole discretion. DMAS shall designate administrators who will be authorized to add, change access for or delete USERIDs.

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

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

## **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. Changes to the Commonwealth-specific laws, regulations, and/or policies that result in a substantive change in scope will be handled through the Change Order process in 12.D. Supplier agrees that all Content of DMAS is intended solely for the business of DMAS and is considered private data. Therefore, Supplier shall, at a minimum, implement the following procedures designed to protect the privacy and security of Content:

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

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

- iii). Supplier shall ensure that the Application and/or Licensed Services are capable of auditing the following events. Successful and unsuccessful account logon events, account management events, object access, policy change, privilege functions, process tracking, and system events.
- iv). Supplier shall ensure that the Application and/or Licensed Services are capable of auditing the following events, for Web applications. All administrator activity, authentication checks, authorization checks, data deletions, data access, data changes, and permission changes.
- v). Supplier shall ensure that the Application and/or Licensed Services employs automated mechanisms to centrally review, analyze and correlate audit and log records from multiple components of the Application and/or Licensed Services to support organizational processes for investigation, alerting and response to suspicious activities.
- vi). Supplier shall ensure that the Application and/or Licensed Services support exporting of log files to the Commonwealth for review and analysis.
- vii). Supplier shall ensure that the Application and/or Licensed Services are capable of maintaining all audit records in accordance with Commonwealth record retention policies found at the following URL. <http://www.lva.virginia.gov/agencies/records/>
- viii). Provide evidence of a comprehensive continuous monitoring program encompassing all systems with access to Content.
- ix). Provide evidence that the Application and/or Licensed Services adhere to a security baseline, which is based on least functionality.
- x). Supplier shall ensure that all changes to proposed Application and/or Licensed Services are authorized according to change management policies.
- xi). Supplier agrees to maintain all metadata associated with any original Content submitted into the Application and/or Licensed Services by DMAS for easy retrieval and access, using secure industry standard protocols, within a predefined period as specified in the Contract.
- xii). Supplier agrees to provide a secure method of exporting Content when requested.
- xiii). Supplier shall ensure that the Content exported from the supplier's Application or infrastructure is in an industry standard format that provides for interoperability and portability.
- xiv). Supplier shall ensure that the Application and/or Licensed Services provides and maintain a backup of Content that can be recovered in an orderly and timely manner within a predefined frequency consistent with recovery time and recovery point objectives, as specified in the Contract.
- xv). Supplier shall ensure that the Application and/or Licensed Services can store a backup of Content, at least daily, in an off-site "hardened" facility, located within the continental United States, maintaining the security of the Content.
- xvi). Implement a contingency plan designed to maintain the access to the Application and/or Licensed Services and to prevent the unintended destruction or loss of Content. This plan should provide a predefined frequency, consistent with recovery time and recovery point objectives, as specified in the Contract, for disaster recovery and archival purposes of Content at a secure facility located within the continental United States.
- xvii). Supplier shall partition, in aggregate for this contract, all Content submitted into the Application and/or Licensed Services by DMAS in such a manner that it will not be impacted or forfeited due to E-discovery, search and seizure or other actions by third parties obtaining or attempting to obtain records, information or Content for reasons or activities that are not directly related to the business of DMAS.

- xviii). Service must support multi-factor authentication for access to any administrative portal and/or any remote administrative interface.
- xix). Supplier shall fully cooperate with Commonwealth incident response resources and all required law enforcement personnel for assistance in the handling and reporting of security incidents.
- xx). Supplier shall maintain an incident response program that implements incident handling for security incidents that includes preparation, detection and analysis, containment, eradication, and recovery processes.
- xxi). Incident response must have the capability to support automated mechanisms for supporting incident handling processes.
- xxii). Supplier shall provide the capability to document incidents and investigations in the Commonwealth's incident handling system.
- xxiii). Supplier shall provide quarterly summary reports of Intrusion Detection System (IDS) and Intrusion Prevention System (IPS) events to: [enterpriseservices@vita.virginia.gov](mailto:enterpriseservices@vita.virginia.gov)
- xxiv). Supplier ensures that all Content is removed or destroyed in accordance with and/or exceeding the requirements of the Commonwealth Data Removal standard located at the following URL. <http://www.vita.virginia.gov/library/default.aspx.id=537#securityPSGs>
- xxv). Supplier shall support physical security measures, including securing all Content on a secure server, in locked data cabinets within a secure facility located within the continental United States.
- xxvi). Supplier shall ensure that access to facilities housing Content or supporting applications are restricted to only allow access to Supplier's personnel and agents who have a need to know in connection with operation and support of the Application and/or Licensed Services.
- xxvii). Supplier shall ensure that notification is sent to DMAS in writing thirty (30) days prior to its intention to replace or add any third-party that will be provided access to Content whether that access is provided by Supplier or Supplier's subcontractors. The DMAS may reject any additional or new third parties who may be provided access to Content.
- xxviii). Supplier shall ensure that the Application and/or Licensed Services operating systems, middleware, applications, and interfaces will be scanned for vulnerabilities every 30 days and scanning reports be provided to DMAS as required by Commonwealth security standards.
- xxix). Supplier shall cooperate with the Commonwealth to allow monthly vulnerability scans against all public-facing interfaces with access to Commonwealth data.
- xxx). Application and/or Licensed Services must have the capability to set affinity on tiered systems. Supplier ensures that no one hypervisor can host the application and the data storage.
- xxxi). Supplier shall ensure that all Content is stored, processed and maintained within the continental United States at all times.
- xxxii). Supplier shall report the exact geographic location of all Commonwealth data at all times if that Content is not stored in a Commonwealth facility. Supplier shall provide a report to confirm the exact geographic location of any Content not stored in a Commonwealth facility every 30 days.
- xxxiii). Supplier shall, at all times, remain compliant with the privacy and security requirements mandated by federal, state and local laws and regulations.
- xxxiv). Supplier shall ensure 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. The Trust Service Principles that should be covered in the SOC 2 Type 2 are: Security, Availability, Processing Integrity, Privacy, and Confidentiality.

- xxxv). Supplier shall engage an independent third-party audit organization, at Supplier's sole cost and expense, performs 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. 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 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 their systems as required by Commonwealth security standards. For third-party hosted systems, updates should be installed in compliance with SEC 525. Systems hosted by the Commonwealth should have updates installed in compliance with SEC 501. Please refer to the following link for the above mentioned Commonwealth security standards. <http://www.vita.virginia.gov/library/default.aspx.id=537#securityPSGs>.
- xl). Supplier shall ensure that they will utilize industry standard malware protection, incorporating both signature and non-signature-based detection mechanisms, on all systems with access to Content.
- xli). Supplier shall ensure that malware protection will be centrally managed and receive regular automatic updates to malicious code protection mechanisms and data files from the software vendor.
- xlii). Within fifteen (15) business days after the expiration or termination of this Contract, Supplier shall confirm in writing to DMAS that all Content has been removed from all systems where the Content resided during performance of this Contract in a manner that complies with and/or exceeds the Commonwealth Data Removal standard located at the following URL: <http://www.vita.virginia.gov/library/default.aspx.id=537#securityPSGs>. The written confirmation shall include (i) sufficient detail describing the processes and procedures used in removing the Content, (ii) information about the locations of where it was removed from within the Application and storage and other locations, and (ii) the date the removals were performed. All metadata, in its original form, shall be returned to DMAS.
- xlii) Regular training for Supplier personnel regarding the security and data recovery programs referenced in this Section.
- xliii) Regular testing of the systems and procedures outlined in this Section; and

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

xlv) 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 thirty (30) days, or such time is appropriate to the complexity and severity of the matter, 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](mailto:enterpriseservices@vita.virginia.gov), with a written plan of action to cure. 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 procurement or transition costs or injunctive or other equitable relief.

## 7. PROPRIETARY RIGHTS

### A. Supplier's Proprietary Rights

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

### B. DMAS Requirements and License Restrictions

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

- i). DMAS will use commercially reasonable efforts to ensure that Application Users comply with all of the terms and conditions hereof;
- ii). DMAS shall not reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from any of the software comprising or in any way making up a part of the Application;
- iii). DMAS shall not directly or indirectly copy or reproduce all or any part of the Application, whether electronically, mechanically or otherwise, in any form including, but not limited to, the copying of presentation, style or organization, without prior written permission from Supplier; provided, however, DMAS may reproduce and distribute any Application output generated from the relevant DMAS's Content, and an Application User may reproduce and distribute any 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 Application or Supplier Product or any component thereof, provided as part of the Licensed Services, except as otherwise authorized by Supplier. However, DMAS may reproduce and distribute any Application output (e.g., reports) generated by DMAS using the Application, and an Application User may reproduce and distribute any reports or output generated by the Application User using the Application and pursuant to the permissions in this Contract;
- v). DMAS shall only use the Application and Supplier Product in the normal course of business, in connection with, and as part of, the Licensed Services;
- vi). DMAS shall not attempt to gain unauthorized access to the Application or Licensed Services, other user accounts, computer systems or networks connected to the Licensed Services;
- vii). DMAS shall not remove, obscure or alter Supplier's proprietary notices, disclaimers, trademarks, or other proprietary rights notices of any kind affixed or contained in the Application or Licensed Services or any written or electronic report, output or result generated in connection with the Licensed Services;

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

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

### **C. DMAS Proprietary Rights**

Except as otherwise stated herein and with the exception of any applicable third-party rights, Content and any customizations made solely for DMAS' operation of the Application or for interoperability with other DMAS systems or applications paid for by DMAS under this Contract, 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 solely 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 such Content and customizations to DMAS, or, at DMAS request, certify in writing that said Content and customizations in all formats, have been destroyed.

## **8. TRANSITION ASSISTANCE**

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

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

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

The Transition/Turnover obligations set forth in this section and in any Transition/Turnover 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. 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. Notice of such delays will be handled through the DDI documentation, including but not limited to the mutually agreed upon Work Plan.

## **B. Acceptance**

The Application shall be accepted when DMAS reasonably determines that DMAS and its Application Users can successfully access and use all functionalities of the Application which Supplier is required to provide to such Users. DMAS agrees to complete Acceptance testing with the Work Plan and the DMAS Approved Test Plan. After receiving written notice from Supplier of the ability of DMAS and its Application Users to access the Application, or within such other period as set forth in the Contract. Supplier agrees to provide to DMAS such assistance and advice as DMAS may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses incurred which will be reimbursable by DMAS at the then current per diem amounts set forth by the Virginia Department of Accounts and published at: <http://www.doa.virginia.gov/> or a successor URL(s). DMAS shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing. See Section 10 of the Contract for more details on the acceptance process.

## **C. Cure Period**

If during the Acceptance test period, DMAS is unable to access the licensed functionalities of the Application, Supplier shall provide DMAS with such access, and DMAS Application Users with their required access, within seven (7) days of written notice of inability to access, or as otherwise agreed between DMAS and Supplier in the Contract. Should Supplier fail to provide access to the licensed functionalities of the Application and such failure constitutes a material breach of the Agreement, 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 due to a breach by Supplier of the Agreement, 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. See Section 10 of the Contract for more details on the acceptance process.

## **10. RECORDS AND AUDIT**

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

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

At any time during the term of this Contract, Supplier shall provide the following Application Services (including telephonic support and all necessary travel and labor as described in Exhibit A and reflected in Exhibit B) without additional charge to DMAS in order to ensure DMAS and its Application Users are able to access and use the Application in accordance with the requirements of the Contract.

### **A. Coverage**

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

### **B. Service Levels**

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



The level of severity (e.g., 1, 2, 3, 4), shall be outlined in the Quality Management Plan developed during the DDI Phase, but which in no case shall be mutually agreed upon less than three months prior to the beginning of the O&M Phase.

**C. Application Evolution**

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

**12. SERVICE LEVELS AND REMEDIES**

**A. Availability**

Supplier's failure to make the Licensed Services Available to DMAS and its Application Users at least 99% of the time in any given month during the term of the Contract, excluding scheduled maintenance or excusable downtime, shall be deemed a service level default ("Service Level Default") and DMAS may obtain the non-exclusive remedies set forth in Attachment A, Table of Service Levels and Remedies for Licensed Services. For purposes of this Contract, "Available" means that DMAS and its Application Users are able to access all features and functions of the Application and Licensed Services required by DMAS, including but not limited to the Application and Supplier Product. Credits shall be applied against the next invoice. Notwithstanding the foregoing, Supplier and DMAS herein agree that the amount of such credits to be applied against a monthly invoice shall not exceed twenty-five (25) percent of the amount of Supplier's monthly invoice. In the event such damages would exceed twenty-five (25) percent of the monthly invoice, any remaining credit due to DMAS would be included in the next monthly 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 summarized in Attachment A. In the event of vendor/contractor/Agent dispute relating to fault/failure determinations and/or apportionment of fault/responsibility, DMAS will serve as the final decision-making authority. DMAS decisions will be subject to the Escalation Procedures and dispute resolution provisions of this Contract.

**B. Provisioning**

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

**C. Reporting**

Once each calendar month during the term of this Contract, Supplier shall provide DMAS with a written report that shall contain information with respect to the performance of the Application and Licensed Services. Supplier shall submit a copy of each report VITA at: [enterpriseservices@vita.virginia.gov](mailto:enterpriseservices@vita.virginia.gov). Such report, unless otherwise agreed upon by the parties, shall be in conformity with the reporting Supplier provides to its other customers utilizing an application and licensed services identical or similar to the Application and Licensed Services provided to DMAS. Representatives of Supplier and DMAS, and VITA at its option, shall meet as often as may be reasonably requested by either party, but no less often than once each calendar quarter, to review Supplier's performance of Licensed Services and the performance of the Application and to discuss technical plans, financial matters, system performance, service levels and for any other matters related to this Contract that may be reasonably requested by either Supplier or DMAS. Supplier shall notify VITA of such meetings by email to: [enterpriseservices@vita.virginia.gov](mailto:enterpriseservices@vita.virginia.gov). DMAS or VITA may independently audit the report at its expense no more than two (2) times annually.

#### **D. Failure to Meet Service Level Commitments**

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

If, and to the extent, a single event triggers multiple SLA to have not been met, DMAS, at its sole discretion, shall choose one service level metric to apply. Reoccurrence of the same event more than one time, or a similar event, will be treated as separate events with separate SLAs assessed.

#### **E. Escalation Procedures**

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

### **13. 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 a copy of all Content/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 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:

- File List Test - To ensure the deposited items are catalogued and confirm they are readable, (re)useable, and virus free
- 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.

Supplier agrees 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 in the failure to cure such breach within the applicable cure period set forth in the Contract, Supplier's bankruptcy, Supplier's failure to continue to do business in the ordinary course. Supplier agrees to pay all expenses associated with establishing and maintaining the escrow account and the contents mentioned above.

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

## **15. GENERAL WARRANTY**

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

### **A. Licensed Services, Application and Documentation**

Supplier warrants the following with respect to the Licensed Services and the Application:

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

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

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

iv). The Application provided hereunder is at the current release level unless DMAS has specified an older version in the Contract or otherwise. Current release level means one release level prior to the latest generally available version or generally available version;

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 beyond what is identified in the Requirements unless otherwise agreed;

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

vii). Supplier warrants that the Documentation and all modifications or amendments thereto which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow a user who is proficient in the underlying technologies and tools to understand and utilize fully the Application without reference to any other materials or information.

#### **1. 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.

**B. 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.

**C. Access to Product and Passwords**

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

**16. THIRD PARTY TERMS AND CONDITIONS**

Should Supplier's provision of the Licensed Services or any performance obligations under the Contract include third-party terms and conditions, the aforementioned referenced Commonwealth security policies standards and guidelines; i.e., SEC501 and SEC525, shall take precedence over any third party terms and conditions. For the purposes of statutory law as referenced and incorporated in the Contract, if there is any conflict with any third party terms, such statutory law shall govern.

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

Supplier and DMAS shall mutually agree upon the definitions and severity levels that shall be subject to the SLAs MCSS-SLA-016, MCSS-SLA-017, and MCSS-SLA-021 during the DDI phase of the Contract, in accordance with the provisions contained in Section 11.B of this Exhibit G and other applicable sections of the Contract.

If, and to the extent, a single event triggers multiple SLA to have not been met, DMAS, at its sole discretion, shall choose one service level metric to apply. Reoccurrence of the same event more than one time, or a similar event, will be treated as separate events with separate SLAs assessed.

ID	Description	Measurement	Remedy
MCSS-SLA-001	Online user interface response time	> 4 seconds at the demarcation of the Commonwealth firewall	2% of monthly contract value
MCSS-SLA-002	Website response times Website response time is measured at the Supplier/Contractor's router	> two (2) seconds ninety-nine percent (99%) of the time	1% of monthly contract value
MCSS-SLA-003	Not Applicable to Provider	Not Applicable to Provider	Not Applicable to Provider
MCSS-SLA-004	Not Applicable to Provider	Not Applicable to Provider	Not Applicable to Provider
MCSS-SLA-005	Complete all scheduled batch jobs (schedule to be determined and mutually agreed upon)  The definition of the batch jobs to be included in each category will be defined during the requirements phase.  Category 1: Mission critical processes, such as managed care assignments Category 2: Reports	< 100% on time in category  System generated batch job complete per schedule	Category 1: 2% of monthly contract value  Category 2: 1% of monthly contract value
MCSS-SLA-006	All Modular Core Services Solutions defined reports shall be available online or delivered to the ECM system by scheduled time as defined and mutually agreed upon	< 100% on time  System generated start and end date/time	1% of monthly contract value
MCSS-SLA-007	Not Applicable to Provider	Not Applicable to Provider	Not Applicable to Provider
MCSS-SLA-008	Not Applicable to Provider	Not Applicable to Provider	Not Applicable to Provider

ID	Description	Measurement	Remedy
MCSS-SLA-009	MES critical batch transactional data exchange delivery during agreed upon uptime	< 100% of time	2% monthly contract value
MCSS-SLA-010	Modular Core Services Solutions on-line services, such as portals, availability during agreed uptimes	< 100% of time	2% of monthly contract value
MCSS-SLA-011	All Test regions available during scheduled uptime	< 100% operational	1% of monthly contract value
MCSS-SLA-012	<p><b>DDI Key Positions:</b></p> <ul style="list-style-type: none"> <li>• Executive Account Director</li> <li>• Account Manager</li> <li>• Operational Business Manager</li> <li>• Project Manager (Certification)</li> <li>• Systems/Technical Manager</li> <li>• QA Manager</li> <li>• Testing/Conversion Manager</li> </ul> <p><b>Operations and Maintenance Key Positions:</b></p> <ul style="list-style-type: none"> <li>• Executive Account Director</li> <li>• Account Manager</li> <li>• Operational Business Manager</li> <li>• Systems/Technical Manager</li> <li>• QA Manager</li> <li>• Testing Manager</li> <li>• Certification Manager (12 months)</li> </ul>	<p>&gt; 15 calendar days from vacancy for interim fill, and</p> <p>&gt; 60 days from vacancy for permanent key position</p>	1% of monthly contract value
MCSS-SLA- 013	Not Applicable to Provider	Not Applicable to Provider	Not Applicable to Provider
MCSS-SLA-014	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 Supplier/Contractor will assume all liabilities including any incurred cost to the Department for the Supplier's (and any and all subcontractors and/or agents) 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

ID	Description	Measurement	Remedy
MCSS-SLA-015	Not Applicable to Provider	Not Applicable to Provider	Not Applicable to Provider
MCSS-SLA -016	<p>Post of real-time transaction data to the ISS Supplier/Contractor shall not exceed specified time frame based on the category of the service. The definition of the transactions to be included in each category will be defined during the requirements phase.</p> <p>Category 1: less than or equal to 1 second</p> <p>Category 2: less than or equal to 3 seconds</p> <p>Category 3: less than or equal to 6 seconds</p> <p>Category 4: less than or equal to 20 seconds</p>	Any transactions in a category exceed the measurement in any clock hour	2% of monthly contracted value
MCSS-SLA-017	<p>Posting of batch files to the ISS Supplier/Contractor shall not exceed specified time frame based on the category of the service. The definition of the batch files to be included in each category will be defined during the requirements phase.</p> <p>Category 1: mission critical processes less than or equal to 60 minutes</p> <p>Category 2: low priority processes less than or equal to 4 hours</p>	Any batch file in a category exceeds the measurement time frame	2% of monthly contract value
MCSS-SLA-018	Must meet all published VITA security requirements	Once identified > 1 day	2% of monthly contract value
MCSS-SLA-019	Configuration requests must be applied in the DMAS test region with 2 business days	> 2 business days	2% of monthly contract value
MCSS-SLA-020	All COTS packages must be no less than current release -1 version	Upon Release of COTS version	2% of annual contract value
MCSS-SLA-021	The Supplier/Contractor will prioritize all defects into severity levels as defined by DMAS and resolve them according to the established timeframes for the production system defects	< 100%	1% of the monthly contract value

ID	Description	Measurement	Remedy
	<p>Severity Level One (1) Defects: within 60 minutes of notification to or from Supplier/Contractor</p> <p>Severity Level Two (2) Defects: within 4 hours</p> <p>Severity Level Three (3) Defects: within 8 hours</p> <p>Severity Level Four (4) or higher: within an agreed upon schedule between the Supplier/Contractor(s) and the Department after the defect was identified</p>		
MCSS-SLA-022	On the occurrence of a disaster, the Supplier/Contractor will restore essential services irrespective of the time the incident occurred	> 120 clock minutes	2% of the annual contract value
MCSS-SLA-023	A comprehensive technical and operational test of the Disaster Recovery (DR) Plan and Business Continuity Plan	Failure to pass the annual test in a contract year	2% of the annual contract value
MCSS-SLA-024	Not Applicable to Provider	Not Applicable to Provider	Not Applicable to Provider
MCSS-SLA-025	Establish individual security & access to system	> 2 business days from request	1% of annual contract value
MCSS-SLA-026	The Supplier/Contractor's solution must be certified by CMS.	Solution is not certified by CMS	Reimbursement to the Department for the difference in FFP funds received from CMS for the period of time the system is not certified
MCSS-SLA-027	Not Applicable to Provider	Not Applicable to Provider	Not Applicable to Provider



**ATTACHMENT B**

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

See Comprehensive List of Service Level Agreements in Attachment A.  
Vendor-specific escalation procedures may also be included here.