

**EXHIBIT G –SOFTWARE AS A SERVICE  
ADDITIONAL CONTRACT TERMS AND CONDITIONS  
TABLE OF CONTENTS**

<b>1. DEFINITIONS</b>	<b>2</b>
A. Application	2
B. Application Users	2
C. Content	2
D. Documentation	2
E. Licensed Services	2
F. Requirements	2
G. Supplier Product	2
H. Update	2
I. Web Site	3
<b>2. TERM AND TERMINATION</b>	<b>3</b>
A. Scalability	3
<b>3. DESCRIPTION OF LICENSED SERVICES</b>	<b>3</b>
<b>4. SUPPLIER RESPONSIBILITIES</b>	<b>3</b>
A. Standard Application Responsibilities	3
B. Ancillary Responsibilities	4
<b>5. DMAS RESPONSIBILITIES</b>	<b>5</b>
<b>6. CONTENT PRIVACY AND SECURITY</b>	<b>5</b>
<b>7. PROPRIETARY RIGHTS</b>	<b>6</b>
A. Supplier’s Proprietary Rights	6
B. DMAS Requirements and License Restrictions	7
C. DMAS Proprietary Rights	7
<b>8. TRANSITION ASSISTANCE</b>	<b>8</b>
<b>9. COMMENCEMENT AND ACCEPTANCE OF LICENSED SERVICES</b>	<b>8</b>
A. Licensed Services Commencement Date	8
B. Acceptance	8
C. Cure Period	8
<b>10. RECORDS AND AUDIT</b>	<b>9</b>
<b>11. APPLICATION AND LICENSED SERVICES SUPPORT</b>	<b>9</b>
A. Coverage	9
B. Service Levels	9
C. Application Evolution	9
<b>12. SERVICE LEVELS AND REMEDIES</b>	<b>9</b>
A. Availability	9
B. Provisioning	10
C. Reporting	10
D. Failure to Meet Service Level Commitments	10
E. Escalation Procedures	10
<b>13. INSURANCE</b>	<b>10</b>
<b>14. ESCROW AGREEMENT</b>	<b>10</b>
<b>15. GENERAL WARRANTY</b>	<b>12</b>
A. Licensed Services, Application and Documentation	12
B. Privacy and Security	13
C. Operating System and Software Supportability	13
D. Access to Product and Passwords	13
<b>16. ACCEPTABLE USE POLICY (IF APPLICABLE AND ACCEPTABLE)</b>	<b>13</b>

**EXHIBIT G –SOFTWARE AS A SERVICE  
ADDITIONAL CONTRACT TERMS AND CONDITIONS**

These additional terms and conditions for provision of a Software as a Service contractual obligation as part of an overall solution provided by the Supplier are in support of and incorporated herewith under Contract No. XXXX. This Exhibit (“Exhibit”) sets forth additional terms and conditions under which Supplier shall provide such Application and Licensed Services (“Licensed Services”) to Department of Medical Assistance Services (DMAS).

**1. DEFINITIONS**

**A. Application**

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

**B. Application Users**

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

**C. 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 to Supplier in connection with this Contract.

**D. Documentation**

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

**E. Licensed Services**

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

**F. Requirements**

The functional, performance, operational, compatibility, acceptance testing criteria and other parameters and characteristics of the Application and Licensed Services, as authorized by the Contract and/or as set forth in Exhibit A and such other parameters, characteristics, or performance standards that may be agreed upon in writing by the DMAS and Supplier.

**G. Supplier Product**

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

**H. 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.

**I. Web Site**

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

**2. TERM AND TERMINATION**

**A. Scalability**

DMAS may make a written request to increase or decrease the scope (e.g., number of USERIDs) of Licensed Services (“revised usage”) under a written notice submitted to Supplier by DMAS. The revised usage shall be effective not more than one (1) business hour following the request. Pricing for the revised usage of Licensed Services shall be calculated as provided in Exhibit B and shall be prorated on a daily basis for remaining portion of the current monthly billing period. For purposes of this provision, a written notice may include an e-mail or the use of a Supplier-provided provisioning website by DMAS’s designated administrator. [NOTE: This assumes SaaS billed monthly, in arrears, with demand-based license/pricing. Modify if other price/billing model used.]

**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 on servers owned, operated, housed, and maintained by Supplier and shall make such Application(s) available to DMAS’s designated Application Users through the Internet.

Supplier has acquired any and all license rights in the Application(s) necessary and appropriate for Supplier to provide the Licensed Services as listed and described in Exhibit A for DMAS. Supplier hereby grants DMAS and its Application Users a non-exclusive, transferable, worldwide license to access and use by any method the Application during the term of this Contract. The license fee for the rights shall be as set forth in Exhibit B, and shall apply regardless of access mode.

DMAS is a state agency, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code of Virginia, and the license shall be held by the Commonwealth.

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

**4. SUPPLIER RESPONSIBILITIES**

**A. Standard Application Responsibilities**

Unless otherwise indicated in Exhibit A, Supplier shall acquire and maintain, at no charge to DMAS, the hardware and software required to host the Application(s). The hardware and software on which the Application(s) is hosted will be maintained in good operating condition, consistent with or exceeding generally accepted industry practices and procedures. 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 ordered by DMAS. No information regarding DMAS or any Application User shall be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or

by an order of a court of competent jurisdiction. This obligation shall extend beyond the term of the Contract.

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

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

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

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

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

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

x). (Add any additional, project specific Supplier Standard Application responsibilities.)

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

## **B. Ancillary Responsibilities**

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 to by DMAS and

Supplier in any exhibit hereto or as agreed in any change order issued hereunder; and  
(iii) otherwise support the Application as provided under this Contract and any exhibits hereto or as agreed in any change order issued hereunder.

## 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 Exhibit A.

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

- i). DMAS is responsible for protecting said passwords and for any authorized and unauthorized use made of the passwords. DMAS will fully cooperate with law enforcement authorities in the detection and prosecution of illegal activity related to unauthorized use of the Licensed Services.
- ii). DMAS shall have the right to add, change access for, or delete USERIDs at its sole discretion. DMAS shall designate administrators who will be authorized to add, change access for or delete USERIDs.
- iii). Upon notification by DMAS of an Application User's deletion, Supplier shall remove said Application User from its server within one (1) hour of receipt of such notification. If Supplier fails to make such a deletion, DMAS shall not be held liable for any charges or damages incurred due to use of the unauthorized USERID.

## 6. CONTENT PRIVACY AND SECURITY

Supplier shall provide a secure environment for Content and any hardware and software, including servers, network and data components provided by Supplier as part of its performance under this Contract. Supplier shall provide a secure environment for Content and any hardware and software in accordance with VITA's Security Standards located at:

<http://www.vita.virginia.gov/library/default.aspx?id=537#securityPSGs> in order to prevent unauthorized access to and use or modification of, and to protect, the Application and Content. Supplier agrees that all Content of DMAS is intended solely for the business of the 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;
- ii). External connections to the World Wide Web which will 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;
- iii). Industry standard firewalls regulating all data entering Supplier's internal data network from any external source which will enforce secure connections between internal and external systems and will permit only specific types of data to pass through;
- iv). Industry standard encryption techniques which will be used when Content is transmitted by Supplier on behalf of DMAS;
- v). Physical security measures, including securing all Content on a secure server, in locked data cabinets within a secure facility located within the United States. Access to facilities housing the Application and Content restricted to only allow access to personnel and agents of Supplier who have a need to know in connection with operation and support of the Application;
- vi). A backup of Content, for an orderly and timely recovery of such data in the event that the Licensed Services may be interrupted. Unless otherwise described in this Contract, Service Provider shall maintain a backup of Content that can be recovered within two (2) hours at any point in time. Additionally, Service Provider shall store a backup of Customer Data in an off-site "hardened" facility, located within the United States no less than daily, maintaining the security of Customer Data, the security requirements of which are further described herein.
- vii). Supplier agrees to maintain all metadata associated with any original Content submitted into the Application by DMAS for easy retrieval and access within two (2) hours at any point in time.

viii). Supplier agrees to partition, in aggregate for this Contract, all Content submitted into the Application 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.

ix). Supplier agrees to maintain and follow a disaster recovery plan designed to maintain Application User access to the Application and Licensed Services, and to prevent the unintended destruction or loss of Content; and which plan, unless otherwise specified herein, shall provide for daily back-up of Content and archival of such Content at a secure facility located within the United States. The disaster recovery plan shall provide for and be followed by Supplier such that in no event shall the Application, Licensed Services, Supplier Product and/or Content be unavailable to any Application User for a period in excess of twenty-four (24) hours;

x). Supplier agrees that during the term of this Contract, Supplier will retain DMAS's Content for the full term of the Contract.

xi). Supplier, and through Supplier, its employees, agents and subcontractors, shall immediately notify DMAS, of any degradation, potential breach or breach of Content and Application privacy or security in any systems supporting the Licensed Services. Supplier shall provide DMAS the opportunity to participate in the investigation of the reported situation and to exercise control over reporting the unauthorized disclosure, to the extent permitted by law.

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

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

xiv). Supplier shall ensure performance of a SSAE 16 Type II audit at least once annually of Supplier's environment. Upon request from DMAS (not more than once annually), Supplier shall provide DMAS with a copy of Supplier's final SSAE 16 Type II audit report. Supplier shall also assist DMAS in obtaining the current SSAE 16 Type II audit report from any third-party providing services to Supplier, if said third-party services involve the processing or storage of DMAS's Content.

xv). Supplier's failure to comply with the provisions in items (i) through (xiv) shall constitute a breach of this Contract.

xvi). 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/uploadedfiles/vita\\_main\\_public/unmanaged/library/psgs/data\\_removal\\_standard\\_514\\_03%2010\\_07\\_2008\\_r3.pdf](http://www.vita.virginia.gov/uploadedfiles/vita_main_public/unmanaged/library/psgs/data_removal_standard_514_03%2010_07_2008_r3.pdf). 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.

xvii). DMAS agrees 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.

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

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

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

## 7. PROPRIETARY RIGHTS

### A. Supplier's Proprietary Rights

Except as otherwise stated herein, the Licensed Services (including without limitation, the Application and Updates, and Supplier Product, except to the extent that Supplier Product

contains Content) and Documentation are the sole and exclusive property of Supplier and its licensors. All modifications, enhancements, Updates, and translations of the Licensed Services shall be deemed a part thereof.

## **B. DMAS Requirements and License Restrictions**

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

- i). DMAS will use commercially reasonable efforts to ensure that Application Users comply with all of the terms and conditions hereof;
- ii). DMAS shall not reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from any of the software comprising or in any way making up a part of the Application;
- iii). DMAS shall not directly or indirectly copy or reproduce all or any part of the Application, whether electronically, mechanically or otherwise, in any form including, but not limited to, the copying of presentation, style or organization, without prior written permission from Supplier; provided, however, DMAS may reproduce and distribute any Application output generated from DMAS 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 for DMAS's operation of the Application or for interoperability with other DMAS's systems or applications paid for by DMAS, are and shall remain the sole and exclusive property of DMAS, including all applicable rights to patents, copyrights, trademarks, trade secrets or other proprietary property rights thereto. Additionally, all right, title and interest in and to any Content or customizations relating to DMAS's business shall remain the property of DMAS, whether or not supplied to Supplier or uploaded into the Application. Nothing in this Contract shall be construed as conveying any rights or interest in Content or customizations to Supplier. Upon termination of the Contract, Supplier agrees to either provide the Content and customizations to DMAS, or, at DMAS's request, certify in writing that said Content and customizations in all formats, have been destroyed.

## 8. TRANSITION ASSISTANCE

Upon execution of to 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 this Contract to DMAS’s archive and/or to a system or application maintained by DMAS or a third party application service provider and agreed in writing by DMAS and Supplier, (ii) the Application and Licensed Services to DMAS or a third party service provider when such transition and migration to occur upon termination or expiration of the Contract.

At a minimum, the Transition Plan shall provide that upon expiration or termination of this Contract for any reason, Supplier will return all Content in its possession to DMAS in a format accessible without the use of Supplier’s Application. In addition, Supplier will, at DMAS’s 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’s transition to a new service provider. Supplier shall also provide such reasonable assistance as may be requested by DMAS to effectuate such transition.

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

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

## 9. COMMENCEMENT AND ACCEPTANCE OF LICENSED SERVICES

### A. Licensed Services Commencement Date

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

### B. Acceptance

The Application shall be deemed accepted when DMAS reasonably determines that DMAS and its Application Users can successfully access and use all functionalities of the Application which Supplier is required to provide to such users. DMAS agrees to complete Acceptance testing within three (3) days after receiving written notice from Supplier of the ability of DMAS and its Application Users to access the Application, or within such other period as set forth in Exhibit A. Supplier agrees to provide to DMAS such assistance and advice as DMAS may reasonably require, at no additional cost, during such Acceptance testing, other than pre-approved travel expenses incurred which will be reimbursable by DMAS at the then current per diem amounts set forth by the Virginia Department of Accounts and published at: <http://www.doa.virginia.gov/> or a successor URL(s). DMAS shall provide to Supplier written notice of Acceptance upon completion of successful Acceptance testing. Should DMAS fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) business days following the Acceptance testing period, the Service shall be deemed Accepted.

### C. Cure Period

If during the Acceptance test period, DMAS is unable to access the licensed functionalities of the Application, Supplier shall provide DMAS with such access, and DMAS’s 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 writing. Should Supplier fail to provide access to the licensed functionalities of the Application, DMAS may, in its sole discretion: (i) reject the Application in its entirety and recover amounts previously paid hereunder; (ii) issue a “partial Acceptance” of the Application access with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Application access while reserving its right to revoke Acceptance if timely correction is not forthcoming.

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

## **10. RECORDS AND AUDIT**

Supplier shall maintain accurate records and other evidence pertaining to the costs and expenses for all Licensed Services performed/delivered under this Contract in support of its charges invoiced to DMAS. The records will be to the extent and in such detail as will properly reflect all direct and indirect costs associated with the Contract. In addition, Supplier shall maintain accurate records of the Licensed Services, including but not limited to, the "Uptime" and "Downtime" as set forth in the Supplier Responsibilities Section. DMAS shall have the right, at any reasonable time during regular business hours after giving reasonable advance notice, to inspect and audit the records applicable to this Contract. Supplier shall preserve such records for six (6) years after termination/completion of the Licensed Services agreed to under this Contract.

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

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

### **A. Coverage**

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

### **B. Service Levels**

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

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

### **C. Application Evolution**

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

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

### **A. Availability**

Supplier's failure to make the Licensed Services Available to DMAS and its Application Users at least 99% of the time in any given month during the term of this 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 Exhibit A of the Contract, Table of Service Levels and Remedies for Licensed Services. For purposes of this Contract, "Available" means that DMAS and its Application Users are able to access all features and functions of the Application and Licensed Services required by DMAS, including but not limited to the Application and Supplier Product.

In the event DMAS is eligible for a 100% Service Level Credit under this Section during any given month of the term of the Contract, DMAS may terminate the Contract without penalty upon written

notice to Supplier and, in addition to the remedies available under this Section, receive any additional remedies set forth in the Contract.

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

**B. Provisioning**

Incremental adds, moves or reductions in the scope of the Licensed Service (e.g., USERIDs), shall be completed within one (1) business hour of a written request (including e-mail or submission to Supplier's provisioning website) from DMAS'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. 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 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. DMAS may independently audit the report at its expense no more than two (2) times annually.

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

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

**E. Escalation Procedures**

[To be provided by Supplier with proposal.]

**13. INSURANCE**

In addition to the insurance coverage required by law as referenced in the RFP, Supplier shall carry:

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

**14. ESCROW AGREEMENT**

Supplier shall maintain copies of all Application source code and related technical and user Documentation, in English, in an escrow account, and shall maintain with escrow agent the executed agreement attached hereto as Exhibit C-1 (Application Escrow Agreement). Supplier shall maintain, in a separate escrow account for DMAS, copies of all Content provided by or to DMAS in a format accessible without use of Supplier's Application. An executed agreement for providing for any such Content Escrow Agreement is attached hereto as Exhibit C-2 (Content Escrow Agreement). DMAS acknowledges that, prior to the Effective Date of this Contract, Supplier delivered to DMAS and DMAS received a copy of the executed Application Escrow Agreement naming the Commonwealth of Virginia as a third party beneficiary. DMAS has reviewed Application Escrow Agreement to ensure that such Application Escrow Agreement does not impose upon the Commonwealth any requirements

other than administrative responsibilities necessary for the operation of the Application Escrow Agreement. If events give rise to a need for the escrow agent to release escrowed materials to the Commonwealth, the Commonwealth's sole responsibility shall be to request the release of such materials from the escrow agent. Supplier agrees to notify DMAS in writing not less than thirty (30) calendar days prior to termination or any modification of the Application Escrow Agreement. Any Content Escrow Agreement shall name as a third party beneficiary the DMAS whose Content is kept in escrow pursuant to such Content Escrow Agreement.

Supplier warrants that the information and materials to be kept in escrow in a media safe environment for the benefit of the Commonwealth pursuant to the Application Escrow Agreement are specifically identified and listed in Attachment A to the Application Escrow Agreement and include the most current version used by DMAS of:

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

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

- i). File List Test - To ensure the deposited items are catalogued and confirm they are readable and virus free, and if encrypted, that the Escrow Agent has the decryption keys on deposit.
- ii). Inventory and Analysis Test – To provide a complete audit and inventory of the deposit including analysis of deposited media to verify the presence of build instructions, to identify all of materials necessary to recreate the original development environment and to confirm the presence of all build instructions, file classification tables, database schema and listings.
- iii). Compile Test – To validate whether the development environment can be recreated from the deposited documentation and files; to identify third-party libraries, to recreate the Supplier's development environment; to compile source files and modules, to recreate executable code and to prepare a complete list of any hardware or software configurations.
- iv). Binary Comparison Test – To test the functionality of the compiled deposit materials by comparing the files built in compile testing to the licensed, executable file running at DMAS's site.
- v). Full Usability Test – To confirm the source code placed in escrow will be fully functional in the event of a release and to perform a relevant series of tests to ensure that replicated software runs properly in the required DMAS environment.
- vi). Final Operability Test – To perform a final demonstration of the functioning software.
- vii). Fault Remedy – To collaborate with Supplier on fixing any faults discovered during the testing, to obtain corrected escrow items and to re-perform any verification tests as necessary until all tests are successful, with written detailed reports to DMAS.

Supplier warrants that the information and materials to be kept in escrow in a media safe environment for the benefit of DMAS pursuant to a Content Escrow Agreement shall be specifically identified and listed in Attachment A to such Content Escrow Agreement and include a monthly back up of the Content repository for DMAS.

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

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

## 15. GENERAL WARRANTY

### A. Licensed Services, Application and Documentation

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

- i). The Application is pursuant to a particular Request for Proposal ("RFP"), and therefore such Application shall be fit for the particular purposes specified by DMAS in the RFP and in this Contract. Supplier is possessed of superior knowledge with respect to the Application and is aware that DMAS is relying on Supplier's skill and judgment in providing the Licensed Services, including the Application.
- ii). Supplier represents and warrants (i) that it shall perform the Licensed Services in conformity to the specifications set forth in Exhibit A in a professional and workmanlike manner and (ii) that the Licensed Services shall not infringe any third party proprietary rights including (without limitation) any trademark, trade name, trade secret, copyright, moral rights, patents or similar intellectual property rights.
- iii). Supplier warrants that the Application and Licensed Services will conform in all material respects to the Requirements set forth in this Contract. Supplier warrants that the Application Licensed Services will conform to the applicable specifications and Documentation, not including any post-Acceptance modifications or alterations to the Documentation which represent a material diminishment of the functionality of the Application, Licensed Services or Supplier Product. Supplier also warrants that such Application and Licensed Services are compatible with and will operate successfully when used on the equipment in accordance with the Documentation and all of the terms and conditions hereof.
- iv). The Application provided hereunder is at the current release level unless DMAS specifies an older version in Exhibit A of the Contract;
- v). No corrections, work arounds or future Application releases provided by Supplier shall degrade the Application, cause any other warranty to be breached, or require Name of Agency to acquire additional hardware equipment or software;
- vi). Supplier warrants that all post-Acceptance Updates, changes, alterations or modifications to the Application, Licensed Services and Documentation by Supplier will be compatible with, and will not materially diminish the features or functionality of the Application, Licensed Services and/or Supplier Product when used on the equipment in accordance with the Documentation and all of the terms and conditions hereof.
- vii). Supplier warrants that the Documentation and all modifications or amendments thereto which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow

a user to understand and utilize fully the Application without reference to any other materials or information.

**B. Privacy and Security**

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

**C. Operating System and Software Supportability**

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

**D. Access to Product and Passwords**

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

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

DMAS agrees to abide by Supplier's Acceptable Use Policy (AUP), as amended by the parties hereby and incorporated as Exhibit X. Because certain standard clauses that may appear in, or be incorporated by reference into, Supplier's standard AUP cannot be accepted by DMAS, and in consideration of the convenience of using that form, and this form, without the necessity of specifically negotiating a separate contract document, the parties hereto specifically agree that:

- i. In the event of a conflict between this Contract and the AUP, the Contract shall control;
- ii. In the event of a material, unilateral revision to the AUP by Supplier that substantially impairs the ability of DMAS or its Application Users from their lawful use of the Licensed Service, DMAS shall have the option to:
  - a. request that the revision be rescinded;
  - b. request that the revision be waived as to DMAS receiving Licensed Services under this Agreement;

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