

## LICENSE AGREEMENT ADDENDUM – NON VITA USE

The Department of Medical Assistance Services (hereinafter referred to as “DMAS”), pursuant to [§ 2.2-2012](#) of the Code of Virginia and on behalf of the Commonwealth of Virginia, and \_\_\_\_\_ (“Supplier”), a business incorporated in \_\_\_\_\_, F.E.I.N. \_\_\_\_\_, having its principal place of business at \_\_\_\_\_, are this day entering into a contract and, for their mutual convenience, the parties are using the standard form contract (“\_\_\_\_\_”) provided by Supplier. This addendum, duly executed by the parties, is attached to and hereby made a part of Supplier’s standard form contract and together shall govern the use of any and all \_\_\_(name of)\_\_\_ Software licensed by the Commonwealth under this agreement whether or not specifically referenced in the order document.

Supplier represents and warrants that it is a corporation authorized to do in Virginia the business provided for in this contract. If Supplier is not a U.S.-based entity, Supplier maintains a registered agent and a certification of authority to do business in Virginia.

The Department of Medical Assistance Services 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 any license granted by Supplier shall be held by the Commonwealth.

As used herein, the term “contract” shall mean the Supplier’s standard form contract and any and all exhibits and attachments thereto. The term(s) “Customer,” “You,” and/or “you,” as used in the contract, shall mean, as applicable, DMAS or the Commonwealth, or any of their officers, directors, agents or employees.

Supplier’s standard form contract is, with the exceptions noted herein, acceptable to DMAS. Nonetheless, because certain standard clauses that may appear in, or be incorporated by reference into, Supplier’s standard form contract 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, notwithstanding any provisions appearing in the attached Supplier’s standard form contract, none of the following shall have any effect or be enforceable against DMAS, the Commonwealth, or any of their officers, directors, employees or agents:

1. Requiring the application of the law of any state other than the Commonwealth of Virginia in interpreting or enforcing the contract or requiring or permitting that any dispute under the contract be resolved in any court other than a circuit court of the Commonwealth of Virginia;
2. Requiring any total or partial compensation or payment for lost profit or liquidated damages by DMAS, the Commonwealth, or their officers, directors, employees or agents if the contract is terminated before its ordinary period;
3. Imposing any interest charge(s) contrary to that specified by [§ 2.2-4347](#) et seq. of the Code of Virginia;
4. Requiring DMAS or the Commonwealth to maintain any type of insurance either for the benefit of the DMAS or the Commonwealth or for Supplier’s benefit;
5. Granting Supplier a security interest in property of the DMAS or the Commonwealth or any of their officers, directors, employees or agents;
6. Requiring the Commonwealth, DMAS or any of their officers, directors, employees or agents to indemnify or to hold harmless Supplier for any act or omission;
7. Limiting or adding to the time period within which claims can be made or actions can be brought (Reference Code of Virginia §8.01 et seq.);

8. Limiting selection and approval of counsel and approval of any settlement in any claim arising under the contract and in which the Commonwealth, DMAS or any of their officers, directors, employees or agents is a named party;
9. Binding the Commonwealth, DMAS or any of their officers, directors, employees or agents to any arbitration or to the decision of any arbitration board, commission, panel or other entity;
10. Obligating the Commonwealth, DMAS, or any of their officers, directors, employees or agents to pay costs of collection or attorney's fees;
11. Requiring any dispute resolution procedure(s) other than those in accordance with [§ 2.2-4363](#) et seq. of the Code of Virginia;
12. Permitting Supplier to access any Commonwealth or DMAS records or data, except pursuant to court order;
13. Permitting Supplier to use any information provided by the Commonwealth or DMAS except for Supplier's own internal administrative purposes;
14. Requiring the Commonwealth or DMAS to limit its rights or waive its remedies at law or in equity, including the right to a trial by jury; and
15. Bestowing any right or incurring any obligation that is beyond the duly granted authority of the undersigned representative of DMAS to bestow or incur on behalf of the Commonwealth of Virginia..
16. Establishing a presumption of severe or irreparable harm to Supplier by the actions or inactions of DMAS;
17. Limiting the liability of Supplier for property damage or personal injury;
18. Permitting Supplier to assign, subcontract, delegate or otherwise convey the contract, or any of its rights and obligations thereunder, to any entity without the prior written consent of DMAS except as follows: Supplier may assign all or any of its rights and obligations to a third party as a result of a merger or acquisition or sale of all or substantially all of its assets to such third party provided assignee agrees in writing to be bound by the terms and conditions set forth in the contract and provided such third party is a U.S.-based entity or maintains a registered agent and a certification of authority to do business in Virginia, or to an affiliate of Supplier, provided Supplier remains liable for affiliate's compliance with the terms and conditions set forth in this Contract;
19. Not complying with the contractual provisions at the following URL, which are mandatory provisions, required by law or by VITA, that are hereby incorporated by reference:  
<https://www.vita.virginia.gov/uploadedFiles/SCM/StatutorilyMandatedTsandCs.pdf>  
The terms and conditions in documents posted to the aforementioned URL are subject to change pursuant to action by the legislature of the Commonwealth of Virginia or a change in VITA policy. 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 URL periodically;
20. Not complying with the contractual claims provision [§ 2.2-4363](#) of the Code of Virginia which is also incorporated by reference;
21. Enforcing 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. They are expressly disclaimed. UCITA shall apply to this contract only to the extent required by [§ 59.1-501.15](#) of the Code of Virginia;
22. Not complying with all applicable federal, state, and local laws, regulations, and ordinances;
23. Requiring that the Commonwealth waive its sovereign immunity or its immunity under the Eleventh Amendment;
24. Requiring that the Commonwealth, which is tax exempt, be responsible for payment of any taxes, duties, or penalties;

25. Requiring or construing that any provision in this contract conveys any rights or interest in Commonwealth or DMAS data to Supplier;
26. Requiring the use of foreign currency. The currency which shall be used for this contract is United States Dollars. Any claim which may arise hereunder shall be settled in United States Dollars;
27. Obligating the Commonwealth beyond approved and appropriated funding. All payment obligations under this contract are subject to the availability of federal, state, and/or local appropriations for this purpose. In the event of non-appropriation of funds for the items under this contract, DMAS may terminate, in whole or in part, this contract or any order, for those goods or services for which funds have not been appropriated. This may extend to the renewal of maintenance services for only some of the licenses granted by Supplier. Written notice will be provided to the Supplier as soon as possible after legislative action is completed. There shall be no time limit for termination due to termination for lack of appropriations;
28. Permitting unilateral modification of the contract by Supplier;
29. Permitting termination by Supplier of the contract or the licenses granted thereunder, or permitting suspension of services by Supplier, except pursuant to an order from a court of competent jurisdiction;
30. Requiring or stating that the terms of the Supplier's standard form contract shall prevail over the terms of this addendum in the event of conflict;
31. Renewing or extending the contract beyond the initial term or automatically continuing the contract period from term to term;
32. Requiring that the contract be "accepted" or endorsed by the home office or by any other officer subsequent to execution by an official of DMAS before the contract is considered in effect;
33. Delaying the acceptance of the contract or its effective date beyond the date of execution;
34. Defining "perpetual" license rights to have any meaning other than license rights that exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the contract;
35. Permitting modification or replacement of the contract pursuant to any new release, update or upgrade of Software or subsequent renewal of maintenance. If Supplier provides an update or upgrade subject to additional payment, DMAS shall have the right to reject such update or upgrade;
36. Requiring purchase of a new release, update, or upgrade of Software or subsequent renewal of maintenance in order for the Commonwealth or DMAS to receive or maintain the benefits of Supplier's indemnification of the Commonwealth or DMAS against any claims of infringement on any third-party intellectual property rights;
37. Prohibiting the Commonwealth or DMAS from transferring or assigning to any entity the contract or any license to pursuant to the contract;
38. Granting Supplier or an agent of Supplier the right to audit or examine the books, records, or accounts of DMAS;

The parties further agree as follows:

39. Supplier warrants that it is the owner of the Software or otherwise has the right to grant to DMAS the license to use the Software granted hereunder without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.
40. Supplier agrees to indemnify, defend and hold harmless the Commonwealth, DMAS or their officers, directors, agents and employees ("Commonwealth's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, 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 or subcontractor of Supplier, (ii) any act or omission of any employee or

subcontractor of Supplier, (iii) breach of any representation, warranty or covenant of Supplier contained herein, (iv) any defect in the Software, or (v) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Software. 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 the selection and approval of counsel and approval of any settlement shall be satisfactory to DMAS against whom the claim has been asserted.

41. DMAS may rely on independent contractors, acting on behalf of DMAS, to perform functions requiring the use of and access to the Supplier's Software. Nothing in the Supplier's standard form contract shall limit such third parties' from using or accessing the Software in order to perform such functions. If any invention, work of authorship, or confidential information is developed exclusively by an employee, consultant, or third-party contractor or subcontractor of DMAS during the performance of Services by Supplier, Supplier shall have no ownership claim to such invention, work of authorship, or confidential information.
42. Any travel expenses incurred by Supplier in the course of performing the services must be pre-approved by DMAS and shall be reimbursed at the then-current per diem rates published by the Virginia Department of Accounts.
43. DMAS may require that Supplier personnel submit to a criminal background check prior to performance of any services under this contract.

This contract, consisting of this DMAS addendum and the Supplier's standard form contract, constitute the entire agreement between the parties and may not be waived or modified except by written agreement between the parties.

This contract has been reviewed by staff of DMAS. Its substantive terms are appropriate to the needs of DMAS.

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed as of the last date set forth below by the undersigned authorized representatives of the parties, intending thereby to be legally bound.

<b>Supplier Name</b>	Department of Medical Assistance Services
By: _____ (Signature)	By: _____ (Signature)
Name: _____ (Print)	Name: _____ (Print)
Title: _____	Title: _____ (Agency Head or Designee)
Date: _____	Date: _____