



COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES
600 E. BROAD STREET, SUITE 1300
RICHMOND, VA 23236

Service Authorization and Specialty Services Contract

between

The Department of Medical Assistance Services (DMAS)

and

Supplier

**CONTRACT
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CONTRACT

THIS CONTRACT ("**Contract**") is entered into by and between the Department of Medical Assistance Services ("**DMAS**"), pursuant to § 2.2-2012 of the *Code of Virginia* ("**Code**") and XX ("**Supplier**"), a [REDACTED] headquartered at XX, to be effective as of **Contract Award Date** ("**Effective Date**").

1. PURPOSE AND SCOPE

DMAS, is seeking services that will establish a program to use predictive analytics to mitigate risk of improper payments to providers of services that are paid under the state plan for medical assistance and all applicable waivers.]. This Contract sets forth the terms and conditions under which Supplier shall provide such services to DMAS.

2. DEFINITIONS

A. Acceptance

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

B. Authorized Users

DMAS, and end users as authorized by DMAS for its required operational audience.

C. Claim

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. Collectively, "Claims".

D. Code

The Code of Virginia, as amended, and all laws in the titles, chapters, articles and sections contained therein.

E. Commonwealth

The Commonwealth of Virginia.

F. Commonwealth Indemnified Parties

Means, collectively and individually, the Commonwealth, DMAS, their officers, directors, agents, and employees.

G. 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.

H. Confidential Information

Non-public proprietary or trade secret information of DMAS or Supplier, whether the information is in written, graphic, machine readable or other tangible form, and which at the time of disclosure to any other Party is either (i) marked as being "Confidential" or "Proprietary"; (ii) Health Records; (iii) Personally Identifiable Information, including information about DMAS's employees, contractors, and customers, or Sensitive Data, including PHI; or (iv) information that is protected by statute or other applicable law. (i) marked as being "Confidential" or "Proprietary"; (ii) Health Records; (iii) Personally Identifiable Information, including information about DMAS's employees, contractors, and customers, or Sensitive Data, including PHI; or (iv) information that is protected by statute or other applicable law.

Confidential Information" also includes any (a) information to which the Supplier has access in DMAS facilities or DMAS's systems, (b) Work Product and information pertaining to the Work Product, (c) DMAS data, DMAS software, and systems access codes, and (d) information concerning DMAS's and any other Authorized User's operations, plans, employees, contractors or third party suppliers.

The term "Confidential Information" does 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.

I. Contract

This agreement, including all exhibits, schedules, and attachments, including any modifications or amendments thereto, entered into by DMAS and Supplier.

J. Contractor

The use of the term "Contractor" in any of the following terms, conditions, links, or IRS Publication 1075 means the same as the term "Supplier" as defined and used in this Contract.

K. Deliverable

The embodiment of the work performed by Supplier or any combination of Services, Maintenance Services, Licensed Services, Application, Solution, Solution Component, Software, System Software, plans, reports, data, Product, Supplier Product, and Updates, including any and all components, provided or delivered by the Supplier in fulfilling its obligations under the Contract . "Deliverable" also means the development or creation of Work Product, if Work Product is authorized under the Contract.

L. Documentation

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

M. Effective Date

The date this Contract goes into full force and effect as set forth in the preamble of this Contract above.

N. Federal Tax Information ("FTI")

FTI consists of federal tax returns and return information (and information derived from it) that is in the possession or control of DMAS, 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.

O. Health Record

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. (Code § 32.1-127.1:03)

P. Protected Health Information ("PHI")

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. PHI excludes individually identifiable health information in (a) education records covered by the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g); (b) records of any student who is 18 years of age or older, or is attending a postsecondary school, that 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 that 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; and (c) employment records held, in its role as employer, by a health plan, health care clearinghouse, or health care provider that transmits health information in electronic form. (§ 64.2-2100 of the Code)

Q. Receipt

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

R. Requirements

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

S. Services

Any work performed or service provided by Supplier – including the design and development of software and modifications, software updates, solution, products, implementation, installation, maintenance, support, testing, training, or other provision – in fulfilling its obligations under the Contract. "Services" includes all functions, responsibilities, activities, and tasks of the Supplier that are an inherent, necessary, or customary part of the Services, or are required for the proper performance or provision of the Services. As permitted by the scope of the Contract, "Services" may include the discovery, creation, or development of Work Product. This definition does not include Licensed Services.

T. Software

The programs and code provided by Supplier under the Contract hereunder 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 Software, "Software" means the programs and code, and any subsequent releases, provided by Supplier under this Contract as set forth in Exhibit [[XX]] or as described on Supplier's US and International price lists in effect at time of DMAS' placement of order. If this Contract is for Software Maintenance, "Software" also includes the programs and code provided by Supplier under the Contract.

U. Solution

The Supplier's contractually committed technical approach for solving an information technology business objective and associated Requirements as defined and authorized by the scope of the Contract or any order issued under 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.

V. Subcontractor

Any group or person that furnishes supplies or services to the Commonwealth, DMAS, on behalf of Supplier or another Subcontractor in performance of this Contract.

W. Supplier

The entity set forth in the preamble of this Contract and any entity that controls, is controlled by, or is under common control with Supplier.

X. Supplier Personnel

Any and all of Supplier's employees, agents, contractors, or subcontractors performing under this Contract.

Y. SWaM

Any entity certified by the Commonwealth's Department of Small Business and Supplier Diversity as a small, women-owned, minority-owned, or service disabled veteran-owned business, as defined in Code §§ 2.2-2000.1 and 2.2-4310, or a certified micro business as defined in Executive Order Number 20 (2014).

Z. Term

The period of time beginning with the Effective Date and lasting for the length of time, including any extension periods, set forth in the "Contract Term" section below during which this Contract will be in full force and effect.

AA. Transition Out Plan

The written plan developed by Supplier addressing the transition of Supplier's contractual obligations, in whole or in part, away from the Supplier and to DMAS, or its designee, after the expiration or termination of the Contract.

BB. Transition Period

The period of time after the expiration or termination of the Contract that Supplier is obligated to continue providing assistance to DMAS so as to transition the Supplier's contractual obligations, or any portion thereof, to any other supplier.

CC. Update

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.

DD. Warranty Period

The period of time during which Supplier is obligated to provide maintenance for a unit of Software or Product.

EE. 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 discovered, created, or developed by Supplier, or jointly by Supplier and DMAS) in the performance of this Contract. Work Product does not include configuration of software, nor does it include anything developed by Supplier prior to, or outside of, this Contract.

3. TERM AND TERMINATION

A. Contract Term

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, will be effective and legally binding for a period of five (5) years ("Term"). DMAS, in its sole discretion, may extend this Contract for up to five (5) additional one (1) year periods after the expiration of the initial Term. DMAS will issue a written notification to the Supplier stating DMAS' intention to exercise the extension period no less than 30 calendar days prior to the expiration of any current term.

B. Termination for Convenience

DMAS may terminate this Contract, in whole or in part, at any time and for any reason upon not less than 30 calendar days prior written notice to Supplier.

C. Termination for Breach

In the event of breach by the Supplier, DMAS will have the right to terminate this Contract, in whole or in part. Supplier will be deemed in breach in the event that Supplier fails to meet any material obligation set forth in this Contract. Any termination under the provisions of this section will be deemed a "Termination for Breach".

If DMAS deems the Supplier to be in breach, DMAS shall provide Supplier with notice of breach and allow Supplier 15 business days to cure the breach. If Supplier fails to cure the breach as noted, DMAS may immediately terminate this Contract. In addition, if Supplier is found by a court of competent jurisdiction to be in violation of or to have violated 31 U.S.C. § 1352, or if Supplier becomes a party excluded from Federal Procurement and Nonprocurement 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 U.S.C. § 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. Effect of Termination

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

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

F. Termination by Supplier

In no instance will termination by Supplier be considered. Failure by DMAS to make timely payments owed to Supplier for its performance under this Contract will constitute a breach by DMAS. Supplier's remedy for a breach is limited to the remedies set forth in Code § 2.2-4363 and the "Remedies" section of this Contract below.

G. Transition of Services

At the request of DMAS prior to or upon expiration or termination of this Contract, Supplier shall provide all assistance as DMAS may reasonably require to transition the Supplier's contractual obligations, or any portion thereof, to any other supplier with whom DMAS contracts for provision of same. This Transition Period obligation may extend beyond expiration or termination of the Contract for a period of six (6) months [[months]]. If this Contract includes Supplier's provision of licensed products, Supplier shall take no action to restrict or terminate the use of such licensed products after the date of expiration or termination of the Contract or during any Transition Period, or both. DMAS shall pay for any additional maintenance or licensing fees during any Transition Period at the hourly rate or at a fee agreed upon by Supplier and DMAS. Supplier shall provide all reasonable transition assistance requested by DMAS to allow for the expired or terminated portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to DMAS. The transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to transition assistance. Further, any Transition Period will not affect DMAS's rights in regards to any purchased Software perpetual licenses which are paid in full.

H. Contract Kick-Off Meeting

Within 30 calendar days of the Effective Date, Supplier may be required to attend a contract orientation meeting, along with the DMAS contract manager/administrator, project manager(s) or authorized representative(s), 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.

I. Transition Out Plan

Within three (3) months of the Effective Date, Supplier will develop and distribute to DMAS a Transition Out Plan. The Supplier will maintain the Transition Out Plan throughout the Term, and update the Transition Out Plan as needed and subject to DMAS's approval.

J. Contract Closeout

Prior to the Contract's expiration date, Supplier may be provided contract closeout documentation by DMAS. If contract closeout documentation is provided, then Supplier shall complete, sign, and return to DMAS any required documentation within 30 calendar days of receipt to ensure completion of closeout administration and to maintain a positive performance reputation with the Commonwealth. Any required closeout documentation not received within 30 calendar 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 to the Supplier, including final payment, until the documentation is returned to DMAS.

4. SUPPLIER PERSONNEL

A. Selection and Management of Supplier Personnel

Supplier shall ensure that all Supplier Personnel performing under this Contract are competent and knowledgeable of the contractual arrangements. Supplier acknowledges that Supplier is the employer of all Supplier employees and shall have the 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 employees. Supplier shall be solely responsible for the supervision and conduct of Supplier Personnel, including all acts, omissions, gross negligence, and willful misconduct of Supplier Personnel. Additionally, Supplier shall ensure that Supplier Personnel comply with 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 such DMAS's premises of any Supplier Personnel whom 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. Key Personnel

DMAS may designate certain of Supplier's personnel as "Key Personnel" or "Project Managers". Supplier's obligations with respect to Key Personnel and Project Managers will be described in the Contract. Any changes to Key Personnel must be mutually agreed to in writing by Supplier and DMAS. Failure of Supplier to perform in accordance with such obligations may be deemed a breach of this Contract

C. Subcontractors

Supplier shall not use Subcontractors to perform its contractual obligations unless specifically authorized in writing to do so by DMAS. If this Contract is supported in whole or in part with federal funds, Supplier may not subcontract to any Subcontractor that is a party excluded from Federal Procurement and Nonprocurement Programs. In no event may Supplier subcontract to any Subcontractor that is debarred by the Commonwealth or that 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 shall (i) act as prime contractor and will be the sole point of contact with regard to all obligations under this Contract; and (ii) represent and warrant that any authorized Subcontractors shall perform in accordance with the applicable terms and conditions set forth in this Contract, including but not limited to, the warranties set forth in the Contract..

5. NEW TECHNOLOGY

A. Access to New Technology

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

B. New Service Offerings Not Available from Supplier

If new or replacement product or service offerings become available and cannot be competitively provided by the Supplier under the scope of this Contract, DMAS will have the right to purchase the new or replacement products or services from a third party. If DMAS elects to use such new or replacement product or service offerings, Supplier will reasonably assist DMAS to migrate to such products or services.

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

6. GENERAL WARRANTY

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.

Supplier warrants and represents to DMAS that Supplier will fulfill its contractual obligations and meet all Requirements as described in Exhibit A. Supplier warrants and represents to DMAS that:

A. Ownership

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

B. Documentation and Deliverables

i. Any required Documentation Supplier is obligated to provide under this Contract will be sufficient in detail and content to allow an appropriately trained user/programmer to understand and fully utilize, as applicable, the Deliverables without reference to any other materials or information.

ii. All Deliverables provided or delivered pursuant to this Contract are at the current release level unless DMAS specifies an older version in its order.

iii. No Update, engineering change, or revision made to any Supplier-provided Deliverables will (a) degrade the performance of any Deliverable or its components to a level below that defined in the Requirements or the Product manufacturer's or Software Publisher's published specifications, as applicable; (b) cause any other warranty to be breached; or (c) require DMAS to acquire additional hardware equipment or software.

C. Malicious Code

Supplier has used commercially reasonable efforts through quality assurance procedures to verify that there are no Computer Viruses or undocumented features in any of the Deliverables, as obligated and provided by Supplier under the Contract, at the time of delivery to DMAS. Supplier has used the best available means to scan any media provided to DMAS. Supplier warrants that the Deliverables, as obligated and provided by Supplier under the order, do not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent DMAS's use of the Deliverables.

Notwithstanding any rights granted under this Contract or at law, Supplier waives, under any and all circumstances, any right it has or may have in the future to exercise its license termination rights by electronic means. 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.

D. Supplier's Viability

Supplier has the financial capacity to perform and continue to perform its obligations under this Contract. 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. Further, Supplier is not prohibited by any contract, or order by any court of competent jurisdiction from entering into this Contract.

E. Supplier's Past Experience

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

7. SERVICES

A. Acceptance

Service(s) will be deemed accepted when DMAS determines that the Service(s) meet(s) the Requirements set forth in the applicable order. Supplier shall ensure any individual Deliverable functions properly with any other Deliverables provided pursuant to the order. In the event that a

previously Accepted Deliverable requires further modification in order to work properly with any other Deliverable, Supplier shall be responsible for all costs associated with the modification.

DMAS shall commence Acceptance testing five (5) calendar days after Receipt of the Service, or within such other period as set forth in the Contract. Acceptance testing will last no longer than fourteen (14) calendar days, unless otherwise agreed to in writing between DMAS and Supplier, for each Deliverable, or for the first instance of each Service type set forth in Exhibit B. Supplier shall provide DMAS any assistance and advice as DMAS may reasonably require, at no additional cost, during Acceptance testing. DMAS shall provide Supplier written notice of Acceptance upon completion of installation and successful Acceptance testing. In the event that DMAS fails to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) business days following the end of the Acceptance testing period, the Service will be deemed Accepted.

B. Cure Period

Supplier shall correct any non-conformities identified during Acceptance testing and re-submit the non-conforming Service for re-testing within seven (7) calendar days of Supplier's receipt of written notice of non-conformance, unless otherwise agreed to between DMAS and Supplier in the applicable order. Should Supplier fail to cure the non-conformity or deliver a Service which meets the Requirements, DMAS may, in its sole discretion:

- i. reject the Service in its entirety, and any Service rendered unusable due to the non-conforming Service, and recover amounts previously paid to Supplier for all such Services;
- ii. issue a "partial Acceptance" of the Service with an equitable adjustment in the price to account for such deficiency; or
- iii. conditionally accept the applicable Service while reserving its right to revoke Acceptance if Supplier fails to make a timely correction.

Failure of a Service to meet, in all material respects, the Requirements after the second set of acceptance tests may constitute a breach by Supplier. In the event of such breach, DMAS may, at its sole discretion, terminate its order, in whole or in part, for the Services to be provided by Supplier.

8. RIGHTS TO WORK PRODUCT

Any license to pre-existing work will be held by, and all rights in, title to, and ownership of Work Product will vest with:

- i. the Commonwealth, if DMAS is an agency as defined by Code § 2.2-2006 or a legislative, judicial and independent agencies of the Commonwealth board, commission, or other quasi-political entity of the Commonwealth or other body referenced in Title 2.2 of the Code;

A. Work Product

DMAS and Supplier mutually acknowledge that performance of this Contract may result in Work Product. The Parties shall document all Work Product specifications and these specifications will be set forth in Exhibit A and incorporated into this Contract. Supplier shall promptly and fully disclose to the Commonwealth or DMAS any and all Work Product generated, conceived, reduced to practice, or learned by Supplier or any Supplier Personnel, 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 and Supplier Personnel shall not make use of, or disclose to others, any proprietary information relating to the Work Product, other than as is required in the performance of this Contract. All Services performed pursuant to this Contract will include delivery of all source and object code and all executables and documentation for all Work Product. At no time will Supplier deny DMAS access to the Work Product, regardless of its form.

B. Ownership

All Work Product discovered, created, or developed under this Contract is, and will remain, the sole property of the Commonwealth and its assigns, and its assigns, regardless of whether the Services are considered "works made for hire" or "hired to invent". Except as specifically set forth in writing and signed by both DMAS and Supplier, Supplier agrees that the Commonwealth will 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.

Supplier 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 expressly waives all moral rights created in the Work Product. Supplier shall 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. Upon the reasonable request by the Commonwealth with respect to the Work Product, Supplier and any required Supplier Personnel shall execute all documents necessary for use in applying for and obtaining patents, copyrights, and other rights and protection, and in protecting trade secrets with respect to the Work Product.

C. Pre-existing Work

If, and to the extent that, any pre-existing rights are embodied or reflected in the Work Product, Supplier 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. Supplier will retain all ownership rights in any pre-existing works.

D. Return of Materials

Upon termination of this Contract, or in the event DMAS terminates any order issued pursuant to 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, that is in Supplier's possession, custody, or control.

9. FEES, ORDERING, AND PAYMENT PROCEDURE

A. Fees and Charges

In consideration for the Supplier's performance obligations under this Contract, DMAS shall pay Supplier the fee(s) owed pursuant to the schedule of fees and charges as set forth on Exhibit B attached to this Contract. Supplier will only be entitled to those fees owed for Supplier's performance obligations and any additional Products and Services provided to DMAS in accordance with the scope of this Contract and the Requirements, as authorized by Exhibit A,. The fees, and any associated discounts, will be applicable throughout the Term of this Contract unless modified pursuant to the terms and conditions below. In the event the fees or discounts apply for any period less than the entire Term, Supplier agrees that it will not increase the fees during the first twelve (12) month period following the Effective Date, and will not increase the fees more than once in any subsequent twelve (12) month period thereafter. No increase in fee amounts will 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 period ending 60 to 90 days prior to the effective date of the increase compared with the same index one (1) year prior. Supplier must submit any change in price in writing to DMAS and will not become effective for 60 calendar days thereafter.

Reproduction Rights for Supplier-Provided Software

At DMAS's request, Supplier shall provide DMAS with a reproducible, portable data storage device (e.g. CD-ROM or USB flash drive) of Software and Updates. DMAS will be responsible for making copies and distributing the Software and Updates as required. Within 30 calendar 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 or Updates or both deployed during the quarter. Supplier will invoice DMAS for the net number of new licenses reported as deployed.

B. Ordering

DMAS has the right to license or purchase Supplier's Products or Services under this Contract, but DMAS has no obligation to purchase or license from Supplier any of Supplier's Products or Services. This Contract is optional use and non-exclusive, DMAS may, at their sole discretion, purchase, license or otherwise receive benefits from third party suppliers of products and services similar to, or in competition with, the Products and Services provided by Supplier. Supplier shall accept any order placed by DMAS through the Commonwealth's electronic procurement website portal, eVA (<http://www.eva.virginia.gov/>). DMAS is an Agency, as defined by Code § 2.2-2006,

and legislative, judicial, and independent agencies of the Commonwealth, must order through eVA.

i. Purchase Order (“PO”): An official PO form issued by DMAS through eVA.

Supplier shall not accept any order from DMAS if the 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 Nonprocurement Programs.

C. Statement of Work Intentionally Left Blank

D. Invoice Procedures

Supplier shall remit each invoice via email to BCMinvoices@dmass.virginia.gov and the DMAS assigned Contract Administrator (to be identified after Contract executed), promptly after all Supplier’s performance obligations have been accepted and in accordance with the milestone payment schedule, if any, in the applicable order. Payment for any support services, as authorized in the Contract and the DMAS’s applicable order, will be annually in arrears unless otherwise stated in this Contract, or in any order referencing this Contract. No invoice may include any costs other than those identified in the signed order, and those costs must be in accordance with the schedule of fees listed on Exhibit B. Without limiting the foregoing, all shipping costs are the Supplier’s responsibility except to the extent shipping charges are identified in Exhibit B and noted in any signed order referencing this Contract. Supplier shall issue invoices that identify, at a minimum:

- i. Dates/periods that invoice covers, including any service or subscription periods, as applicable.
- ii. Line item description of the Deliverable(s) applicable to this Contract, including any components or service type, and, if applicable, the project milestone.
- iii. Quantity, charge and extended pricing for each line item
- iv. Applicable date of the order
- v. This Contract number and the applicable order number
- vi. Supplier’s Federal Employer Identification Number (“FEIN”)

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

E. Purchase Payment Terms

Supplier is responsible for the accuracy of its billing information. Supplier may not issue invoices pursuant to this Contract until all of Supplier’s performance obligations have been accepted and are in accordance with the milestone payment schedule in the applicable order, or until after services have been rendered. Charges for Deliverables, Components or Services accepted more than 90 calendar days prior to receipt of a valid invoice may not be paid. In the event Supplier repeatedly over-bills DMAS, DMAS may assess a one percent (1%) charge for the amount over-billed for each month that such over-billing continues.

F. Reimbursement of Expenses

All reimbursement expenses incurred by the Supplier shall be included in the final negotiated cost proposal listed under Exhibit B. However, in the event of unforeseen circumstances, DMAS shall pay, or reimburse Supplier, for all reasonable and actual travel-related expenses for greater than 30 miles from portal to portal incurred by Supplier during the relevant period. An Authorized User will only be liable to pay for Supplier’s travel-related expenses, including transportation, meals, lodging and incidental expenses, that have been authorized by DMAS in advance in the order. The travel-related expenses will be reimbursable at the then-current per diem amounts as published by the Virginia Department of Accounts (<http://www.doa.virginia.gov/>).

All reimbursed expenses will be billed to DMAS on a pass-through basis without any markup by Supplier. At DMAS’s request, Supplier shall provide copies of receipts for all travel expenses over US\$30.00.

10. DISPUTED CHARGES

If, before payment of an invoice, DMAS notifies the Supplier in writing of a disputed charge, DMAS will have the right to withhold payment of the disputed amount until the dispute is settled or finally resolved. Supplier shall respond in writing to DMAS' notification of a disputed charge acknowledging Supplier's receipt of the dispute within five (5) business days. Any charges disputed by DMAS will be resolved (whether by credit or explanation of the charge to the DMAS' satisfaction) in the DMAS' required format within two (2) billing cycles (60 calendar days) following DMAS' written notification. In the absence of the Supplier's written evidence identifying the merit of the disputed amounts, DMAS will not be obligated to pay the disputed amounts and may consider the matter concerning the specific identified amounts closed. DMAS will not pay any disputed amounts that remain unresolved after 120 calendar days. If a disputed charge is reversed, Supplier shall reverse all associated surcharges, regulatory charges and taxes.

11. REPORTING

Supplier shall submit to DMAS a monthly report containing data on:

ii. Small Business Procurement and Subcontracting Spend

This report must be submitted in accordance with the instructions and further detailed requirements, detailed by the Department to the following email address dmas-conmgt@dmas.virginia.gov, and using the Supplier's eVA account. Supplier will also be required to report SWaM expenditures via eVA. Supplier's failure to comply with all reporting, payment, and other requirements in this section may be deemed by DMAS, in its sole discretion, to be a breach of the Contract.

A. Small Business Procurement and Subcontracting Spend

Supplier shall provide to DMAS a report of monthly subcontracting spend data. This data must include the spend with all Subcontractors who provide direct performance for obligations under this Contract. Supplier's monthly subcontracting spend data must be submitted via eVA and/or dmas-conmgt@dmas.virginia.gov mailbox, as instructed by the Department.

In addition, every six (6) months following the Effective Date, Supplier shall submit to DMAS a "SWaM Subcontracting Certification of Compliance" ("SSCC") certifying that Supplier has fully complied with the Contract's Supplier Procurement and Subcontracting Plan ("Plan"). A copy of Supplier's Plan is attached to this Contract as Exhibit H, and is incorporated by reference. The SSCC must include a written explanation of any variances of greater than 20% between the Plan and the actual subcontractor spend by Supplier. Supplier's SSCC will be maintained by DMAS in the Supplier's procurement file.

12. SUPPLIER PERFORMANCE METRICS

DMAS has developed a set of supplier key performance indicators ("KPI") relating to Supplier's performance under this Contract and which are attached hereto and incorporated by reference as Exhibit F. Supplier agrees to be bound by and perform its obligations under this Contract pursuant to the KPI. The remedies for Supplier's failure to meet the KPI are set forth in Exhibit F.

Supplier and DMAS agree to meet within 30 calendar days of the Effective Date of this Contract to set forth the methodology and designated personnel of each Party to provide, collect, monitor, and report the KPI performance data and mutually agreed-to incentives and remedies. Supplier agrees to provide to DMAS a report of its performance against the KPIs no less than once every six (6) months throughout the Term. Supplier's report must include a comparison of its KPI performance against the agreed-to targets and, in the event of any shortfall by Supplier, proposed remediation measures. Supplier will report its KPI performance for the Contract in aggregate and for each order over \$1,000,000. Any instances of Supplier non-compliance will be recorded in Supplier's Contract file and shared with Contract stakeholders. Supplier further agrees that any degradation or failure of Supplier's performance obligations may result in failure to renew the Contract, termination for convenience of the Contract or termination for breach of the Contract. DMAS will have all rights and remedies available at law.

13. 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

one (1) DMAS trainer per order. In order to allow DMAS the full benefit of the applicable Deliverable, the training will cover the use and operation of the Deliverable provided to DMAS including instruction in any necessary conversion, manipulation, or movement of such DMAS' data. Supplier shall provide personnel sufficiently experienced and qualified to conduct such training at a time and location mutually agreeable to Supplier and DMAS. Available additional and optional training, and applicable pricing and discounts, are described in Exhibit B.

B. Documentation

Supplier shall deliver to DMAS complete copies of any Documentation applicable to the Deliverable(s) provided to DMAS, in a quantity and media format as agreed upon by the Parties under an order. Should Supplier revise or replace the Documentation, or should Documentation be modified to reflect Updates, Supplier shall deliver to the DMAS copies of the updated or replacement Documentation, in the same quantity and media format as originally requested by DMAS, or as agreed upon between the Parties. DMAS will have the right, as part of any license grant, to make as many additional copies of the Documentation, in whole or in part, for its own use as required. This Documentation must include, but is not limited to, overview descriptions of all major functions, detailed step-by-step installation and operating procedures for each screen and activity, and technical reference manuals. Such Documentation must be revised to reflect any modifications, fixes or updates made by Supplier. DMAS at its own discretion, will have the right, as part of the license granted by Supplier, to modify or completely customize all or part of the Documentation in support of the authorized use of the licensed Application or Software. DMAS may also duplicate such Documentation and include it in such DMAS' document or platform. DMAS shall continue to include Supplier's copyright notice.

14. 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 the other Party's Confidential Information to any third-party.

DMAS may, however, disclose the Confidential Information as delivered by Supplier to subcontractors, contractors, or agents of DMAS that are bound by non-disclosure agreements with DMAS. Each Party shall take the same measures to protect against the disclosure or misuse of the Confidential Information as it takes to protect its own proprietary or confidential information, but in no event will such measures be less than reasonable care.

B. Exclusions

The term "Confidential Information" does 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 (Code §§ 2.2-3700 et seq.) 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, at its own expense,

- i. promptly return all tangible Confidential Information (and all copies thereof except the record required by law) to DMAS User; or

ii. upon written request from the disclosing DMAS, destroy any Confidential Information in Supplier's possession or control, and provide DMAS with written certification of the destruction.

Additionally, Supplier shall cease all further use of DMAS's Confidential Information, whether in tangible or intangible form.

DMAS shall retain and dispose of Supplier's Confidential Information in accordance with the Commonwealth's records retention policies or, if DMAS is not subject to the Commonwealth's policies, in accordance with the DMAS's own records retention policies.

D. Confidentiality Statement

All Supplier Personnel performing Services pursuant to this Contract are required to sign a confidentiality statement or non-disclosure agreement. Any violation of the statement or agreement will be deemed a breach of this Contract and may result in termination of the Contract or any order issued hereunder.

E. Health Insurance Portability and Accountability Act

Supplier shall comply with all applicable provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and, as applicable to the performance of this Contract. Supplier shall:

- i. not use or further disclose Protected Health Information ("PHI") other than as permitted or required by the terms of this Contract or as required by law;
- ii. use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this Contract hereunder;
- iii. report to DMAS, as applicable, any use or disclosure of PHI not provided for by this Contract;
- iv. mitigate any harmful effect that is known to the Supplier of a use or disclosure of PHI by the Supplier or Supplier Personnel in violation of the requirements of this Contract;
- v. impose the same requirements and restrictions contained in this provision on Supplier Personnel performing on this Contract;
- vi. provide access to PHI contained in its records to DMAS, in the time and manner designated by DMAS, or at the request of DMAS, to an individual in order to meet HIPAA access; and
- vii. make available PHI in its records to DMAS for amendment and incorporate any amendments to PHI in its records at DMAS' request.

F. Freedom of Information Act Acknowledgement

All Supplier documents now or later comprising the Contract may be released in their entirety under the Virginia Freedom of Information Act, and Supplier agrees that any confidentiality or similar stamps or legends that are attached to any future documents or information may be ignored to the extent they claim confidentiality beyond that permitted by the Virginia Freedom of Information Act.

15. INDEMNIFICATION

A. Indemnification Generally

Supplier shall defend, indemnify, and hold harmless all Commonwealth Indemnified Parties from and against any third-party Claims to the extent the Claims in any way relate to, arise out of, or result from:

- i. any negligent act, negligent omission, or intentional or willful conduct of Supplier or any Supplier Personnel;
- ii. a breach of any representation, warranty, covenant, or obligation of Supplier contained in this Contract;
- iii. any defect in the Supplier-provided products or services; or
- iv. any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Supplier-provided products or services.

B. Defense of Claims

Supplier will be solely responsible for all costs and expenses associated with the defense of all third-party Claims against Commonwealth Indemnified Parties. 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.

C. Duty to Replace or Reimburse

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 products or services, or Supplier's performance, Supplier shall, at its expense and option, either (a) procure the right to continue use of such infringing products or services, or any components thereof; or (b) replace or modify the infringing products or services, or any components thereof, with non-infringing products or services satisfactory to DMAS.

D. Supplier Dispute of Obligation to Indemnify

If a Claim is commenced against any Commonwealth Indemnified Parties by a third party alleging an infringement of the third party's intellectual property rights and Supplier is of the opinion that the allegations in the third-party Claim, in whole or in part, are not covered by the indemnification provision in this Contract, then In the event that Supplier disputes any of its obligations to defend or indemnify any Commonwealth Indemnified Party, then Supplier shall immediately notify DMAS) in writing and shall, nonetheless, take all reasonable steps to protect the rights, remedies, and interests of the Commonwealth Indemnified Parties in the defense of the Claim, including to 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.

16. LIABILITY

A. Supplier Liability

Supplier agrees that it is fully responsible for all acts and omissions of all Supplier Personnel, including their gross negligence or willful misconduct. Except for liability arising from any combination of:

- i. any intentional or willful misconduct, fraud, or recklessness of Supplier or any Supplier Personnel; or
- ii. any act or omission of Supplier or any Supplier Personnel that results in Claims for bodily injury, including death, and damage to real property or tangible property resulting from the negligence of a Supplier or any Supplier Personnel;

Supplier's indemnification obligations and liability shall not exceed, in aggregate, twice the value of the Contract. This limitation will apply on a per-incident basis; it being understood that multiple losses stemming from the same root cause constitute a single incident.

B. Limitation of Liability

Supplier will be liable for damages caused by its employees, agents, or subcontractors. Except for liability arising out of a Party's negligence or willful misconduct, neither Party will be liable to the 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 of these damages.

17. INSURANCE

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

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

Cyber Security Liability insurance coverage in the amount of \$10,000,000 per occurrence.

18. SECURITY COMPLIANCE

Supplier shall comply with all provisions of the then-current Commonwealth security procedures, published by VITA and which may be found at: <https://www.vita.virginia.gov/it-governance/itrm-policies-standards/>, or any successor URL(s), as are pertinent to Supplier's operation. Further, Supplier shall comply with all applicable provisions of DMAS's then-current security procedures as are pertinent to Supplier's operation and that have been provided to Supplier by DMAS. Supplier shall also comply with all applicable federal, state, and local laws and regulations.

Any unauthorized release of any Confidential Information, or Commonwealth proprietary or personal information, by the Supplier or Supplier Personnel constitutes a breach of Supplier's obligations under the Contract. Supplier shall notify DMAS within 24 hours of discovery of, or when Supplier should have discovered, any breach of "unencrypted" and "unredacted" personal information, as those terms are defined in Code § 18.2-186.6, and other confidential or personal identifying information provided to the Supplier by DMAS. To the extent permitted by law, Supplier shall provide DMAS the opportunity to participate in the investigation of the breach and to exercise control over reporting the unauthorized disclosure.

Supplier shall ensure performance of an audit of Supplier's environment at least annually to provide assurance of "Controls Relevant to Security, Availability, Processing Integrity, Confidentiality or Privacy" in accordance with the then-current standards set forth by the American Institute of CPAs.

Supplier shall indemnify, defend, and hold DMAS, the Commonwealth, their officers, directors, employees and agents harmless from and against any and all Claims, including reasonable expenses suffered by, accrued against, or charged to or recoverable from DMAS, the Commonwealth, their officers, directors, agents or employees, on account of the failure of Supplier to perform its obligations pursuant to this section.

19. IMPORT/EXPORT

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

20. 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 15 business days, then DMAS may immediately terminate this Contract, on notice to Supplier unless Supplier immediately gives DMAS or such adequate assurance of the future performance of this Contract order. If this Contract has not been otherwise terminated and bankruptcy proceedings are commenced with respect to Supplier, then DMAS may suspend all further performance of this Contract until Supplier assumes this Contract and provides adequate assurance of its performance of Supplier's contractual obligations 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 suspension of further performance by DMAS pending Supplier's assumption or rejection will not be a breach of this Contract, and will not affect the rights of DMAS to pursue or enforce any of its rights under this Contract or otherwise.

21. GENERAL PROVISIONS

A. Relationship Between DMAS and Supplier

Supplier has no authority to contract for, bind or commit 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 will Supplier, or any Supplier Personnel, hold itself out as or be considered an agent or an employee of DMAS, and DMAS will not have any duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or any Supplier Personnel. 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 for Supplier any federal, state, or local employment taxes, including, but not limited to, income tax withholding and social security contributions. Supplier shall pay or withhold 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. Supplier shall reimburse DMAS in the event that any taxes, interest or penalties are assessed against and paid by DMAS as a result of this Contract.

B. Licensing Within the Commonwealth

Any and all licenses granted or provided pursuant to this Contract, whether to Work Product, System Software, COTS Software, or any other Software will be held by:

- i. the Commonwealth, if the Authorized User is an agency as defined by Code § 2.2-2006 or a legislative, judicial and independent agency of the Commonwealth, board, commission, or other quasi-political entity of the Commonwealth of Virginia or other body referenced in Title 2.2 of the Code;
- ii. the applicable public body, if the Authorized User is a locality, municipality, school, school system, college, university, local board, local commission, or local quasi-political entity; or
- iii. the applicable private institution of higher education, if the Authorized User is a private institution of higher education listed at: <http://www.cicv.org/Our-Colleges/Profiles.aspx>.

C. Incorporated Contractual Provisions

In addition to the terms, conditions, and obligations of this Contract, Supplier agrees to the DMAS “Mandatory Contract Terms” which consist of the VITA:

- “Core Contractual Terms”;
- “Required eVA Terms and Conditions”; and
- “Mandatory Internal Revenue Service (IRS) Publication 1075 (required for FTI data only)”

Each of these Mandatory Contract Terms are set forth at the following URL and incorporated into this Contract by reference: <https://www.vita.virginia.gov/supply-chain/scm-policies-forms/mandatory-contract-terms/> .

Supplier agrees that non-compliance with the above-referenced Mandatory Contract Terms and IRS Publication 1075 may be deemed, solely by DMAS, as a material breach of the Contract. Supplier is responsible for verifying the correct and current version of this IRS publication and related safeguarding terms language and acknowledges that DMAS will be held harmless.

The terms and conditions set forth in documents posted at the URL above, and any successor URL(s), are subject to change pursuant to action by the legislature of the Commonwealth, change in VITA policy, adoption of revised eVA business requirements, or change to IRS Publication 1075. If a change is made to any of the Mandatory Contract Terms documents, a new effective date will be noted in the applicable document title. Supplier is advised to check the URLs, or their successors, periodically.

D. Compliance with the Federal Lobbying Act

Supplier’s signed certification of compliance with 31 U.S.C.§ 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 is incorporated as Exhibit G to this Contract.

E. Ethics in Public Contracting

By signing this Contract, Supplier warrants that its assent to this Contract is made without collusion or fraud, and that Supplier has not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with their proposal or the terms of this Contract. Further, Supplier warrants that it has not conferred any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, on any public employee having official responsibility for this procurement transaction, unless consideration of substantially equal or greater value was exchanged. In addition, Supplier warrants that it will notify DMAS if it becomes aware of a potential conflict of interest in the future.

F. Governing Law

This Contract is governed by and will be 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 relating to this Contract must 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. The Uniform Computer Information Transactions Act applies to this Contract only to the extent required by Code § 59.1-501.15.

G. Dispute Resolution

In accordance with Code § 2.2-4363, contractual claims, whether for money or other relief, must be submitted in writing to the public body from whom the relief is sought no later than 60 calendar 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 will not delay payment of amounts agreed due in the final payment. The relevant public body shall render a final decision in writing within 30 calendar days after its receipt of the Supplier's written claim.

The Supplier may not invoke any available administrative procedure under the Code 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 30 calendar days. The decision of the relevant public body will 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 Code § 2.2-4364 or the administrative procedure authorized by Code § 2.2-4365.

Upon request from the public body from whom the relief is sought, Supplier shall submit any and all contractual disputes arising from this Contract to the 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.

In the event of any breach by a Commonwealth agency, Supplier's remedies will be limited to claims for damages and interest allowable under the Code and, if available and warranted, equitable relief. All such claims to be processed pursuant to this Section. In no event will Supplier's remedies include the right to terminate any license or support services hereunder.

H. Assignment

This Contract is binding upon and will 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 under this Contract, to any entity without the prior written consent of DMAS, and any attempted assignment or subcontracting without consent will be void. DMAS may assign this Contract to any entity, so long as the assignee agrees in writing to be bound by the all the terms and conditions of this Contract.

If any law limits the right of DMAS or Supplier to prohibit assignment or nonconsensual assignments, the effective date of the assignment will be 30 calendar 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 will not be covered by this assignment.

I. Severability

Invalidity of any term of this Contract, in whole or in part, will 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.

J. Survival

Any provisions of this Contract regarding Software License, Rights To Work Product, Warranty, Escrow, Confidentiality, Content Privacy and Security, Liability, Indemnification, Transition of Services, the right to purchase Maintenance Services, and the General Provisions will survive the expiration or termination of this Contract.

K. Force Majeure

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

L. No Waiver

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

M. Remedies

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

N. Right to Audit

DMAS reserves the right to audit those Supplier records that relate to the Contract or any SOWs or orders issued there under. DMAS's right to audit is limited as follows:

- i. three (3) years from end date of the Contract;
- ii. at DMAS's expense;
- iii. no more than once per every twelve (12) months;
- iv. performed at Supplier's premises, during normal business hours at mutually agreed upon times; and
- v. access to Supplier cost information is excluded.

In no event will Supplier have the right to audit, or require to have audited, DMAS. Taxes

The Commonwealth is exempt from Federal excise and all State and Local taxes and any such taxes may not be included in Contract prices. Tax certificates of exemption, Form ST-12 can be obtained from DMAS upon request. Deliveries against this Contract shall be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

O. Currency

All prices, costs, or fees in this Contract and all exhibits, schedules, orders, s will be in United States dollars.

P. Advertising and Use of Proprietary Marks

No Party may use the name of the other Party or refer to the other Party, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of the other Party. In no event may any Party use a proprietary mark of the other Party without receiving the prior written consent of the other Party.

Q. Notices

Any notice required or permitted to be given under this Contract must be in writing and will 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:

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

Pursuant to Title 13.1 of the Code, DMAS or Supplier may change its address for notice purposes by giving the other Party 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, or signed, or both, 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.

R. 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 will be billed for 50% of the employee's annual salary in effect at the time of termination.

S. Contract Administration

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

T. Captions

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

U. 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:

RFP 2021-03, including all attachments and addenda thereto.

Supplier's Response to RFP 2021-03 as shown in Exhibit A, B, C.

Exhibit A – Requirements

Exhibit B – Pricing

Exhibit C – Supplier Procurement and Subcontracting Plan

Exhibit D – Change Order Template

Exhibit D – Certification Regarding Lobbying

Exhibit E – Supplier Key Performance Indicators

Exhibit G- Business Associate Agreement

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 of this Contract. Any and all terms and conditions contained in, incorporated into, or referenced by the Supplier's proposal are deemed invalid. The provisions of the Virginia Department of General Services, Division of Purchases and Supply Vendor's Manual will not apply to this Contract or any order issued pursuant to the Contract. This Contract may only be amended by an instrument in writing signed by DMAS and Supplier.

V. Order of Precedence

In the event of a conflict, the following order of precedence shall apply: this Contract document, Exhibit A, Exhibit B, Exhibit E, then RFP and any addenda thereto. In the event of a conflict or inconsistency between the negotiated terms of this Contract and any provision incorporated by reference into the Contract (e.g., a section of a License Agreement), the negotiated terms of this Contract will take precedence. For purposes of this section, a "conflict" exists with respect to a subject that has been comprehensively addressed in the Contract when supplementary terms contained in a provision incorporated by reference would alter the rights and obligations of the Parties set forth in the Contract.

W. Counterparts and Electronic Signatures

This Contract may be executed in multiple counterparts, each of which, when assembled to include an original signature for each of Supplier and DMAS, will constitute a complete and fully executed original. All fully executed original counterparts will collectively constitute a single agreement. Signatures transmitted by fax or electronic mail (in portable data format ("PDF")) are also permitted as binding signatures to this Contract.

X. Opportunity to Review

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.

[SIGNATURE PAGE(S) TO FOLLOW]

Signed by the undersigned authorized representatives of DMAS and Supplier and effective as of the Effective Date set forth in the preamble of this Contract above.

Xx

Department of Medical Assistance Services,

By: _____
(Signature)

By: _____
(Signature)

Name: _____
(Print)

Name: _____
(Print)

Title: _____

Title: _____

Date: _____

Date: _____

Address for Notice:

Address for Notice:

Attention: **Supplier Contact**

Attention: Contract Administrator