

VIRGINIA MILITARY INSTITUTE

Lexington, Virginia 24450

PURCHASING OFFICE
Phone 540-464-7323
Fax 540-464-7669

**COMMONWEALTH OF VIRGINIA
STANDARD CONTRACT**

Contract Number: V211-19-019

This contract entered into this 22nd day of January 2019 between Medicat, LLC, FIN #36-3342580, hereinafter known as the "Contractor" and the Commonwealth of Virginia, Virginia Military Institute, hereinafter known as the "Purchasing Agency".

WITNESSETH that the Contractor and the Purchasing Agency, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

Provide an electronic health records management system in response to VMI's solicitation under RFP #V211-19-019 issued 12 August 2018.

SCOPE OF CONTRACT: The Contractor shall provide goods and services related to a vendor hosted, Electronic Health Record management solution as outlined in accordance with the Request for Proposals, Bid Documents dated 26 September 2018.

PERIOD OF PERFORMANCE: 19 December 2018 through 18 December 2023.

COMPENSATION AND METHOD OF PAYMENT: The Contractor shall be paid at the prices and the terms stated in their proposal, subject to all conditions and requirements of the solicitation. In accordance with the Commonwealth of Virginia's *Prompt Payment Act* terms are Net 30 days from receipt of invoice.

CONTRACT DOCUMENTS: The contract documents shall consist of:

- (1) This signed form
- (2) The Contractor's Proposal dated 26 September 2018
- (3) General Terms and Conditions (included in the original solicitation)
- (4) Special Terms and Conditions as required (included in the original solicitation)

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

CONTRACTOR:

By: 

For: Medicat, LLC

Title: Chief Executive Officer

PURCHASING AGENCY:

By: 

For: Virginia Military Institute

Title: Assistant Director of Procurement Services

Medicat Software as a Service End User License Agreement

This Software as a Service End User License Agreement ("Agreement" or "SaaS Agreement") is entered into between you, Virginia Military Institute, ("Client") located at VMI Infirmary, 448 Institute Hill, Lexington, VA, 24450 and Medicat, LLC, ("Medicat"), 303 Perimeter Center N., STE 320, Atlanta, GA 30346.

Medicat permits Client to access and use, subject to this Agreement, for the initial Term as specified, the object code of the Medicat software application as described in Exhibit A ("Licensed Software"), and accompanying documentation related thereto.

1. License Grant

1.1 Subject to this Agreement and in consideration for the mutual covenants made herein, Medicat grants to Client, and Client accepts from Medicat, a limited, non-exclusive, non-transferable license to access and use the Licensed Software (as described in Exhibit A) during the Term. Client will provide access to the Licensed Software only to those end users who are Client employees or contractors engaged in providing Client's health services (collectively, the "Authorized Users").

1.2 The grant of the license to access and use the Licensed Software shall apply to the initial version of the Licensed Software and any other version, revisions or updates of the Licensed Software subsequently provided to Client.

1.3 To ensure satisfactory maintenance and availability of the hosted Software, Client acknowledges and agrees that Medicat may, at any time and for any reason, modify, discontinue, delete or restrict any aspect or feature of the Licensed Software (collectively 'updates') without consent from, or notice to, Client. Medicat shall have no liability for any such changes or modifications. However, changes or modifications that effectively diminish the features or capabilities of the Software as represented at the time of purchase shall be considered a material breach of this Agreement for which Client may elect to terminate under section 4.3 herein. Medicat agrees to provide Client with at least thirty (30) days prior notice of any product enhancements that are material in Medicat's opinion.

2. Ownership and Preservation of Proprietary Rights

2.1 Client acknowledges and agrees that Medicat intellectual property (i.e., source code, copyrighted or patented material, trademarks, service marks, trade secrets, and proprietary and confidential information) are the property of Medicat, subject to Client's use pursuant to this Agreement and that Medicat retains all rights in its intellectual property, including any enhancements thereto or derivative works thereof. It is expressly understood and agreed that ownership of any part of the Licensed Software source code or any related items provided hereunder, including any enhancements thereto or derivative works thereof, shall remain the sole and exclusive property of Medicat and Client shall have no ownership interest in any such Licensed Software, enhancements thereto or derivative works there from.

2.2 Client agrees not to use Medicat's service marks, trademarks or brand names (collectively, the "Marks") relating to the Licensed Software without Medicat's prior written permission. Medicat reserves all rights related to the Marks not expressly granted in this Agreement. Medicat's grant of any license to use any of the Licensed Software is subject to the rights retained by Medicat, which are exercisable in Medicat's sole discretion.

2.3 Client shall only use the Licensed Software for its own business purposes to process its own data and shall take all necessary measures to protect the Licensed Software from any unauthorized use, reproduction, display, publication, disclosure or distribution. Client shall not sell, resell, lease, license, sublicense, give, re-license, market, publicize, release, distribute or otherwise transfer or disclose for any purposes any component of the Licensed Software to any person, firm or entity including, but not limited to, its affiliates, nor shall Client use the Licensed Software to provide data, information services, service bureau, third party administration services, facility management services or consulting services to any other person, firm or entity. Under no circumstances shall Client disclose or provide access to the Licensed Software to individuals or entities who are not Authorized Users without first obtaining written permission from Medicat.

3. Confidentiality

3.1 Each party acknowledges that it will be exposed to Confidential Information of the other during the performance of the Agreement and hereby agrees not to disclose Confidential Information to any third party without the prior written consent of the disclosing party. The receiving party may only use Confidential Information for the purpose intended herein and may only disclose Confidential Information on a need to know basis to its employees and/or authorized agents who agree to or are bound to similar obligations of confidentiality.

3.2 "Confidential Information" means (i) the terms and conditions of the Agreement; and (ii) any other information that (A) if disclosed in tangible form, is marked in writing as "confidential" or with a similar designation; (B) if disclosed orally or visually, is designated orally at the time of disclosure as "confidential"; or (C) with respect to Confidential Information of Client, is information maintained on the hosted system by Medicat on behalf of the client.

3.3 Confidential Information will not include any information that (1) is already in the possession of the receiving party without obligation of confidence, (2) is independently developed by the receiving party, (3) is or becomes publicly available without breach of this Agreement, (4) is rightfully received by the receiving party without obligation of confidence, (5) is released for public

disclosure by the disclosing party; (6) is commingled with other third party information for statistical purposes, or (7) is released by the disclosing party pursuant to court order or applicable law, including the Virginia Freedom of Information Act, Va. Code § 2.2-3700 et seq..

3.4 Client shall not copy, disassemble, decompile, decrypt, reverse engineer or in any way attempt to discover or reproduce the source code of the Licensed Software or any part thereof.

4. Term and Termination.

4.1 The term of this Agreement shall be for a period of five (5) years from the Effective Date, unless terminated earlier as provided for herein (the "Initial Term") and will automatically renew, subject to sufficient appropriation, for additional five (5) year term (each a "Renewal Term") unless notice is provided by either party at least sixty (60) days prior to the end of the then-current term. The Initial Term and each Renewal Term are hereby referred to collectively as the "Term". For purposes of this Agreement, "Effective Date" shall be defined as the date on which the Client's system access is provided by Medicat.

4.2 Annual Subscription pricing will increase each year during the term of this Agreement by 3%. Upon renewal, Medicat will invoice customer year 5 fees, including this annual increase.

4.3 Medicat may terminate this Agreement if Client or any officer, agent or employee of Client breaches any material term or condition of this Agreement and if such breach is not cured to the reasonable satisfaction of Medicat within ten (10) days after notice of such breach is sent by Medicat to Client. In the event that Client does not cure such material breach within the time period provided herein, Medicat may immediately revoke the License granted to Client, prohibit Client's use of the Licensed Software, and Client shall immediately discontinue use of the Software.

4.4 In addition to the rights of Medicat set forth in Section 4.2 in the event of a breach, Medicat may terminate this Agreement and Client access to the Licensed Software effective upon ten (10) days written notice to Client upon: (a) any use, copying or distribution of the Licensed Software not expressly authorized herein; (b) the cessation of the business of Client; (c) voluntary or involuntary filing of a bankruptcy petition or similar proceeding under state law with respect to Client; (d) Client's becoming insolvent or making any assignment for the benefit of creditors; or (e) nonpayment of Medicat invoices for Licensed Software access or other services rendered.

4.5 Termination shall not relieve either party or Client's Authorized End Users of their obligations regarding the confidentiality of each party's confidential information. If termination occurs as a result of Client's failure to comply with any of its obligations under this Agreement, Client shall continue to be obligated for any payments due as of the date of termination. Termination of the license shall be in addition to, and not in lieu of, any other remedies available to Medicat.

4.6 This Agreement is committed and non-cancellable. All fees for the Term are committed and non-cancellable.

4.7 Sections 2, 3, 4, 5, 7 and 9 shall survive termination of this Agreement.

5. LIMITATION OF LIABILITY

To the extent permitted by the Virginia Tort Claims Act, Va. Code § 8.01-105 et seq., the Contractor agrees to be responsible for and to pay for any and all suits, claims, or actions related or arising out of the Contractor's software including, without limitation, those relating to libel, defamation, intellectual property, violation of the right of privacy, plagiarism, or copyright infringement. VMU shall be responsible for the negligent acts or omissions of its officers, employees, agents, or students. Nothing contained herein shall constitute a waiver of the sovereign immunity of the Commonwealth of Virginia. The University shall be responsible for the negligent acts or omission of its officers, employees, agents, or students. Nothing contained herein shall constitute a waiver of the sovereign immunity of the University or the Commonwealth of Virginia.

6. Client's Responsibilities

6.1 Client is solely responsible for acquiring, servicing, securing, maintaining, and updating all equipment, computers, software and communications services not owned or operated by or on behalf of Medicat, that allow Client to access and use the Licensed Software in accordance with any and all operating instructions or procedures that may be issued by Medicat and that meet the minimum requirements specified by Medicat. Client understands and agrees that the operation and availability of the systems used for accessing and interacting with the Licensed Software, including, telephones, computer networks and the Internet or to transmit information, whether or not supplied by Client or Medicat, can be unpredictable and may, from time to time, interfere with or prevent the access to and/or the use or operation of the Licensed Software. Medicat and its affiliates are not in any way responsible for any such interference with or prevention of Client's access and/or use of the Licensed Software.

6.2 Client shall take reasonable steps to establish access and password controls to ensure the security of the Licensed Software and Client Data. Client shall be responsible for system and network password management.

6.3 Medicat will also have no responsibility or liability for issues or damages resulting from Client's failure to use the Licensed Software in accordance with its documentation or for its failure to properly manage system and network passwords.

7. Limited Warranty

7.1 Medicat represents that throughout the Term, the Licensed Software will substantially conform to the operational features detailed in the documentation that properly accompanies the Licensed Software, provided the Licensed Software is accessed and used as provided for therein.

7.2 EXCEPT AS PROVIDED IN THE SERVICE LEVEL GUARANTY SET FORTH IN EXHIBIT C, THE ABOVE WARRANTIES ARE THE ONLY WARRANTIES MADE BY MEDICAT TO CLIENT HEREUNDER. MEDICAT MAKES AND CLIENT RECEIVES NO OTHER WARRANTY, EXPRESS OR IMPLIED AND ANY AND ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED. MEDICAT DOES NOT REPRESENT THAT THE SYSTEM WILL MEET CLIENT'S REQUIREMENTS OR THAT THE OPERATION OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.

8. Service Levels

During the term of the Agreement, Medicat will make commercially reasonable efforts to comply with the Service Level Guarantee Agreement as per Exhibit C, if applicable to Client.

9. General

9.1 Each party acknowledges that it has read, understands and agrees to be bound by this Agreement. Additionally, each party further represents and warrants that it has all the power and authority to enter into this Agreement and to comply with and be bound by its terms.

9.2 This Agreement, along with the respective Schedule(s), and any related exhibits, is the complete and exclusive statement of the Agreement between the parties with respect to the Licensed Software and shall supersede all prior proposals, understandings and all other agreements, oral and written. Client does not have the right to make modifications to this Agreement or to make any additional representations, commitments or warranties binding on Medicat.

9.3 Neither party hereto shall be liable or deemed in default for any delay or failure in performance hereunder resulting from any cause beyond its reasonable control.

9.4 If any provision of this Agreement is held to be invalid or otherwise unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired.

9.5 This Agreement shall be binding upon and inure to the benefit only of the parties hereto and their respective successors and permitted assigns. Client agrees that Medicat may assign this agreement to a third party with written notice, subject to that party being bound by all of the terms and provisions of this agreement. Client may not assign this Agreement nor any of its rights, duties or obligations hereunder without the prior written consent of Medicat.

9.6 The waiver or failure of either party to exercise any right provided for in this Agreement shall not be deemed a waiver of any further right hereunder.

9.7 The parties specifically waive and disclaim the applicability of the Uniform Commercial Code, Uniform Electronic Transactions Act, and Uniform Computer Information Transactions Act to this Agreement. In the event any action or proceeding is brought in connection with this Agreement, each party shall be responsible for its costs and reasonable attorneys' fees. Except for the Client and Medicat, no other party may sue or be sued under this Agreement.

9.8 Client data stored within Medicat's hosted database, including Protected Health Information (as defined in Exhibit D), shall be considered the Client's property. Upon termination of this SAAS Agreement, at the Client's written request, Medicat agrees to deliver a copy of the Client data to the Client on a CD or other mutually agreeable electronic format at no additional charge to the Client.

10. Fees and Payments

The license fees for use of the Licensed Software are based on the modules, content and services subscribed to and number of Authorized End Users of the Licensed Software and shall be paid as set forth in Exhibit A, attached hereto and incorporated herein by reference. In the event Client wishes to increase the number of Authorized End Users, Client shall agree to pay an adjustment corresponding to the new level of use based on Medicat's then current pricing. The dollar amount of such fees, fees for other services and materials supplied in connection with the Licensed Software, and the terms of payment will be specified in an invoice to be furnished by Medicat pursuant to such adjustment. Client shall pay such fees promptly as they come due. Subject to other terms of this agreement, Client's obligation to pay accrued fees and expenses shall survive any termination of this Agreement.

11. Modifications, Enhancements, Upgrades, Updates, Additions

All modifications, enhancements, upgrades, and conversions, of the Licensed Software (collectively, "Modifications") regardless of whether developed in conjunction with use of the Licensed Software by Client, or jointly by Client and Medicat, including, without limitation, such materials which may be developed by Medicat through the reimbursed or unreimbursed efforts of Client's employees or its agents, shall be owned by Medicat and shall automatically be deemed to be part of the Licensed Software for purposes hereof, and subject to all terms and conditions set forth herein. Such Modifications may be subject to additional license

fees to be communicated to Client in advance, subject to availability and to Medicat's decision to make any such Modifications available to any one or more of its licensees.

12. Mutual Consent for Publicity and Promotion

Medicat and Client agree to create and distribute a mutually acceptable press release, case study, and testimonial, including Client's logo and photos, for the purposes of marketing and promotion. These materials may include, but are not limited to brochures, website content, print/broadcast/digital media advertising, etc. Medicat may use said material or the life of the Client's contract with Medicat. Additionally, Client agrees to provide reference up to four times per year for prospective Medicat clients, and to participate as available in Medicat events and client focus, advisory, and test groups

13. Notices

All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- (a) via certified or registered United States mail, return receipt requested;
- (b) by personal delivery;
- (c) by expedited delivery service; or
- (d) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

Medicat:

Medicat LLC

303 Perimeter Center N., Ste 320

Atlanta, GA 30346

Client:

Virginia Military Institute

VMI Infirmary, 448 Institute Hill

Lexington, VA, 24450

Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement, inclusive of Exhibits A, B, C, D, E to be executed and effective this day:

Medicat, LLC

By: 

Print Name: Daryl Rolley

Title: Chief Executive Officer

Date: 01/25/2019

Client: Virginia Military Institute

By: 

Print Name: MAJ Lynn W. Carmack

Title: Assistant Director of Procurement Services

Date: 22 January 2019

EXHIBIT A
Licensed Software as a Service Solution
See Medicat Proposal for Details and Pricing

EXHIBIT B
CLIENT ANNUAL SUPPORT AND MAINTENANCE

In addition to their mutual obligations spelled out in the SaaS Agreement and applicable schedules, the parties further agree as follows:

Section 1. Definitions

The following definitions are used in this Exhibit:

1. "Licensed Software" shall be those programs or modules which are licensed for access by the Client under the SaaS Agreement. This includes any updated program or module access to which is hereinafter furnished to Client by Medicat in connection with a Licensed Software under this Exhibit.
2. "Reference Materials" shall mean the Documentation supplied for the current revision of the Licensed Software and updates to the Documentation as delivered or made available to the Client by Medicat.
3. "Remote Support" is any service rendered by a Medicat representative for the Client via telephone, Internet or any combination thereof.
4. "Client Contact" shall be one or more individuals that have been fully trained on the Licensed Software who are authorized to communicate directly with Medicat on behalf of Client.
5. "Hardware" refers to all equipment necessary to operate the Licensed Software at the Client site, including, but not limited to the personal computers and all of their internal and external components, peripherals, printers, network hardware and wiring, communication devices, and the like.
6. "Update" is a maintenance release in which little to no enhancement or functionality is added to the program.
7. "Upgrade" is a significant update to existing functionality.
8. "Enhancement" is a modification to the Licensed Software where functionality is added.

Section 2. Coverage

Any additional Licensed Software access subsequently purchased by Client shall be automatically covered by Medicat Annual Support and Maintenance.

Medicat will provide its 24/7 Support Coverage to Client, which covers updates, upgrades, enhancements, fixes and client support to the Licensed Software except for the holidays observed by Medicat, as reflected in Schedule 1, for the Term of the Agreement.

Section 3. Medicat's Responsibilities

1. Medicat shall maintain the Licensed Software covered hereunder in good operating condition to perform the functions as specified in the Documentation.
2. Medicat shall correct the Licensed Software if errors in the Licensed Software are discovered and effectively reported to Medicat.
3. Medicat shall provide Client with Remote Support for the Licensed Software. Remote Support shall be available to one Client Contact or designate who has been trained and certified on the operations in question, and only after the Client's Contact or designate has consulted the Reference Manual and on-line documentation for a possible solution to a problem.
4. Medicat shall provide the Client, free of charge, updates, upgrades and enhancements for the Licensed Software for the term of the Agreement.
5. Medicat shall provide preventive software maintenance for the Licensed Software as deemed necessary by Medicat.
6. Medicat shall normally respond to a properly communicated support request for the Licensed Software within 4 hours, and within 1 hour in the event of an Urgent Request.
7. Medicat will release periodic updates, upgrades and enhancements to address those issues that, because of their applicability to Clients nationwide and because of their non-urgent nature, warrant such updates or upgrades.

Section 4. Client Data Safeguards

1. Medicat agrees to implement safeguards to ensure the confidentiality, availability, security and integrity of Client data, including Protected Health Information as defined in Exhibit D, during processing, storage, and transmission. These safeguards should be in accordance with industry best practices and should include (but not be limited to) controls such as datacenters with redundant power and connectivity, change control processes and documentation for system updates testing & deployment, logging & auditing associated with account management & access, and encrypted transmission channels for all Client Data.
2. Medicat also agrees that any and all Client data will be stored, processed, and maintained solely on designated target servers and that no Client data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, unless that storage medium is in use as part of the Medicat's designated backup and recovery processes.

3. Mediat agrees that upon termination of this Agreement it shall erase, destroy, and render unreadable all Client data in a manner acceptable and approved by Client, and shall provide an affidavit certifying said destruction within 30 days of the termination of this Agreement 1 or within 7 days of the request of the Client, whichever shall come first.

Section 5. Client's Responsibilities

1. The Client shall notify Mediat immediately if it becomes aware of any errors occurring in the Licensed Software or operation of the system. Failure to provide this notification in a timely manner may hamper the ability of Mediat to correct the problem.
2. Client shall maintain the necessary environment for the Hardware upon which the Licensed Software is accessed at the Client site. Client shall be diligent in all respects to assure the successful operation of the Licensed Software.

Section 6. Exclusions, Limitations, and Additional Provisions

1. Mediat's obligation to provide maintenance services under this Exhibit B is contingent upon the proper configuration of Client Hardware and the appropriate use of Licensed Software as recommended by Mediat.
2. Maintenance services that are required because of accident, neglect, misuse, electronic problems, media failure, *force majeure*, originating at the Client site, or any failure on the Client's part to abide by the above Client obligations are not covered by this Exhibit and shall be paid for by the Client at Mediat's prevailing non-contractual, hourly rates as reflected in Schedule 2.
3. Maintenance services do not include standard operating supplies, tapes, paper forms, cables, etc. Client must provide its own computer supplies required for normal operations.
4. Maintenance services do not include access to new programs or additional modules not described as included in Exhibit A, but does include updates, upgrades and enhancements only to the Licensed Software for the applicable subscribed to modules.
5. Maintenance services do not include: design or changes of forms or reports, custom modules, custom reports, or custom programs; custom modifications to the Licensed Software, modifications to the Licensed Software based solely upon Client preference, data conversion, and similar functions.
6. Support of problems unrelated to the Licensed Software is not covered under this Exhibit. Unrelated problems include, but are not limited to, all Client hardware problems, all Client network problems, problems with Client third-party vendors, programs, and applications; problems with Client operating systems; problems with Client network operating system and system integration, and Client environmental problems, such as heat, radiation and power surges.
7. Mediat is not responsible for the diagnosis and/or correction of problems that are not related to the Licensed Software but may offer such services at its discretion. Unrelated Client problems may include, but are not limited to, Hardware problems, problems with other applications and environmental problems such as heat, radiation and power surges. If at any time during or at the conclusion of the troubleshooting process the cause of the problem is determined to be one that is not covered by this Exhibit, the Client shall be billed at Mediat's then prevailing non-contractual, hourly rate (as reflected in Schedule 2) based upon the time required to make such a determination.
8. Any obligations and duties which, by their nature, extend beyond the termination of this Exhibit shall survive any termination and remain in effect. This includes all obligations and duties as described in the SaaS Agreement.
9. If any provision or provisions of this Exhibit are held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be in any way affected or impaired.
10. Mediat is not responsible for failure to fulfill its obligations under this Exhibit due to causes beyond its control, including such causes as are normally considered *force majeure*.

SCHEDULE ONE: Holidays observed by Medicat. Medicat is closed on the following days each year.

New Year's Day	1
Memorial Day	1
Independence Day	1
Labor Day	1
Thanksgiving Day and the day following	2
Christmas Day	1

SCHEDULE TWO: Prevailing Rates

SERVICE	RATE	
Remote support	\$250	per hour

Prices are subject to change with written notice.

Exhibit C. SERVICE LEVEL GUARANTEE AGREEMENT

Availability:

Medicat warrants that the Software as a Service solution ("Service Solution") will be generally available 99.99% of the time, except as provided below. General availability will be calculated per calendar month as follows, where:

- Total** means the total number of minutes for the calendar month.
- Nonexcluded** means downtime (period of unavailability) that is not excluded.
- Excluded** means the following:
- Any downtime between 8:00 p.m. and 6:00 a.m. Eastern Standard Time on any Saturday or Sunday night.
 - Any planned downtime on Monday through Friday nights for which Medicat gives 24 hours or more written notice between the hours of 8:00 p.m. and 6:00 a.m. Eastern Standard Time.
 - Any unavailability caused by circumstances beyond Medicat's reasonable control, including without limitation, acts of government, flood, fire, earthquake, civil unrest, acts of terror, strikes or other labor problems, computer, telecommunications, internet service provider failures or delays involving hardware, software or power systems not within Medicat's, or Medicat's data hosting partner's, possession or reasonable control, and network intrusions or denial of service attacks.

Availability Formula: $((Total - Nonexcluded - Excluded) / (Total - Excluded) * 100)$

Unavailability of some specific features or functions within the Service Solution, while others remain available, will not constitute unavailability, so long as the features and functions are not, in the aggregate, material to the Service as a whole.

Penalties:

In the event the Service Solution is not available 99.99% of the time, the Client will be eligible to receive a Service Credit equal to one day of fees (pro-rated against final pricing) for each full percentage point, or fraction thereof, below 99.99%. Any such credit shall be applied to the Client's next invoice. Service credits are capped at the total monthly fee of the service, or its pro-rata equivalent if the fee is paid annually.

The penalties specified in this Penalties section shall be the sole remedy available to the Client for breach of this Service Level Agreement.

Reporting and Claims:

To file a claim under this Service Level Agreement, the Client must send an email to the designated Medicat address in the SaaS agreement with the following details:

- Downtime information with the dates and time periods for each instance of downtime during the relevant period.
- An explanation of the claim made under this Service Level Agreement, including any relevant calculations.

Claims may only be made on a calendar month basis and must be submitted within 10 business days after the end of the relevant month.

All claims will be verified against Medicat system records. Should any period of downtime submitted by the Client be disputed, Medicat will provide to the Client a system-generated record of Service availability for the period in questions.

Exhibit D. BUSINESS ASSOCIATE AGREEMENT

Client's execution of the Business Associate Agreement does not constitute an agreement or admission that Client is a Covered Entity for purposes of HIPAA in the services transacted under the Agreement.

1. Definitions

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in HIPAA 45 CFR 160.103 and 164.501.

(a) Business Associate. "Business Associate" shall mean **Medicat, LLC**.

(b) Covered Entity. "Covered Entity" shall mean **Virginia Military Institute**.

(c) Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

(d) Privacy and Security Rules. "Privacy and Security Rules" shall mean the Standards for Privacy and Security of Individually Identifiable Health Information at 45 CFR part 142, part 160 and part 164, subparts A and E, as well as the Health Information Technology for Economic and Clinical Health and any regulations promulgated thereunder.

(e) Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(f) Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.501.

(g) Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

2. Obligations and Activities of Business Associate

(a) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law.

(b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

(c) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement, including incidents that constitute breaches of unsecured protected health information. Business Associate also agrees to report to Covered Entity any security incident of which it becomes aware.

(d) Business Associate agrees to establish and use appropriate procedures to safeguard against improper uses and disclosures of the Protected Health Information. In the case of electronic Protected Health Information created, received, maintained or transmitted on behalf of the Covered Entity, such procedures shall include implementation of administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of such electronic Protected Health Information.

(e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

(f) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy and Security Rules.

(g) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(h) Business Associate agrees to provide to Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with Section (f) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(i) Business Associate shall request from Covered Entity no more than the minimum necessary Protected Health Information to perform the Services.

(j) Business Associate may disclose Protected Health Information to, and permit the use of Protected Health Information by, its employees, contractors, agents, or other representatives only to the extent reasonably necessary for the performance of the services for or on behalf of Covered Entity, and in compliance with the Privacy and Security Rules.

(k) Business Associate acknowledges and agrees that it shall comply with each provision of the American Recovery and Reinvestment Act of 2009 ("ARRA") that extends a HIPAA Privacy and Security Rules or Security Rule requirement to Business Associates of Covered Entities A and subsequent amendments thereto.

(l) To the extent required by the Privacy and Security Rules, Business Associate shall allow access to Protected Health Information by Covered Entity or the individual to whom such Protected Health Information relates, to the extent that such Protected Health Information is maintained in a designated record set, at reasonable times and in a manner reasonably directed by Covered Entity, in order to meet the individual access requirements under 45 CFR §164.524.

(m) To the extent required by the Privacy and Security Rules, Business Associate shall make any amendments to Protected Health Information maintained in a designated record set that Covered Entity directs pursuant to the amendment requirements under 45 CFR §164.526.

3. Reporting and Mitigating Any Unauthorized Uses and Disclosures

(a) In the event that Business Associate acquires knowledge of any use or disclosure of Protected Health Information that violates this Business Associate Agreement, Business Associate shall report such violation in writing to Covered Entity as soon as practicable.

(b) Business Associate shall establish procedures for mitigating, to the greatest extent possible, any deleterious effects arising from any use or disclosure of Protected Health Information which is not authorized pursuant to this Business Associate Agreement.

(c) Business Associate shall notify impacted persons of any privacy breach (as defined by Section 13400 of the ARRA with respect to Protected Health Information maintained, used, or disclosed by Business Associate pursuant to the agreement between Business Associate and Covered Entity. Pursuant to such obligation, Business Associate will, with respect to any privacy breach,

(i) Investigate any impermissible use or disclosure of Protected Health Information;

(ii) Determine whether there is a significant risk of financial, reputational, or other harm to the affected individual;

(iii) Document and retain the risk assessment and exception analyses, and make them available to the Covered Entity promptly upon request;

(iv) Notify each individual impacted by the breach by first class mail without unreasonable delay and within the applicable statutory notification period and provide toll-free telephone numbers to handle any follow-up inquiries. The notice will consist of:

(A) a brief description of the incident, including the date of the breach and the date it was discovered,

(B) a description of the types of Protected Health Information involved in the breach (such as name, Social Security Number, birth date, home address, account number or health claim information,

(C) the steps the individual should take to protect the individual from potential harm,

(D) a brief description of what the Business Associate is doing to investigate the breach, to mitigate harm to impacted individuals, and to protect against further incidents, and

(E) a toll-free number for individuals to call for more information;

- (v) Provide a substitute notice to individuals for whom there is insufficient mailing address information;
- (vi) Maintain a log and provide the Covered Entity with an annual report of breaches that impact fewer than 500 persons;
- (vii) Notify the Department of Health and Human Services immediately, in the event the breach impacts more than 500 individuals, or annually, for breaches involving up to 500 individuals; and
- (viii) Alert the Covered Entity to any required media notifications and coordinate any such notifications as necessary.

4. Permitted Uses and Disclosures by Business Associate

General Use and Disclosure Provisions

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in Medicat, LLC's SaaS Agreement and to test, install, update, enhance or service the licensed medical information software and its corresponding database, provided that such use or disclosure would not violate the Privacy and Security Rules if done by Covered Entity.

(a) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(b) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).

5. Obligations of Covered Entity

Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

(a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522.

(d) Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy and Security Rules if done by Covered Entity.

6. Term and Termination

(a) **Term.** The Term of this Agreement shall be from the effective date of the SaaS Agreement, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) **Termination for Cause.** Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation. Covered Entity may terminate this Agreement as it applies to the Covered Entity if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity. Contracts between business associates and business associates that are subcontractors are subject to these same requirements.

(c) **Effect of Termination.**

(1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return, or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

7. General Provisions

(a) This Business Associate Agreement may not be modified, nor shall any provision be waived or amended, except in a writing duly signed by both parties. A waiver with respect to one event shall not be construed as continuing; or as a bar to enforcement of any right or remedy as to subsequent events.

(b) Any notice required or permitted under this Business Associate Agreement shall be made by personal service, by commercial courier, or by certified mail with return receipt requested, and shall be deemed effective upon receipt. Notice shall be delivered to the contact person designated below, unless a party directs otherwise upon written notice to the other party:

(c) The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as necessary for the Covered Entity to comply with the requirements of the Privacy and Security Rules.

(d) All notices, requests and demands or other communications to be given hereunder to a Party shall be made via first class mail, registered or certified or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below:

If to Business Associate: Medicat LLC
Attn: Chris Short, CIO
Address: 303 Perimeter Center N., Ste. 320
Atlanta, GA 30346
Telephone number: (866) 633-4053
Fax: (866) 550-6706

If to Covered Entity: Virginia Military Institute
Attn:
VMI Infirmary, 448 Institute Hill
Lexington, VA 24450
Telephone number: (540) 464-7218
Fax: 540-464-7707

In Witness Whereof, this Agreement is executed by the Parties as of the date first written below.

Business Associate: Medicat, LLC

By: _____

Signature

Print: Daryl Rolley

Title: Chief Executive Officer

Date: 01/25/2019

Covered Entity: Virginia Military Institute

By: _____

Signature

Print: MAJ Lynn W. Carmack

Title: Assistant Director of Procurement Services

Date: 22 January 2019

Exhibit E. MEDICAL CONTENT LICENSE AGREEMENT

Product - Licensor

Gold Standard Alchemy Suite - Elsevier
Miller OB/GYN Patient Instructions - Elsevier
Safran Sports Medicine Instructions - Elsevier
DSM-5 Code Set - American Psychiatric Assoc.
Rcopia ePrescribing - DrFirst

Product - Licensor

Stedman's Spellcheck - Wolters Kluwer
Lexicomp Patient Instructions - Wolters Kluwer
Health Language (CPT4, ICD9/10 & Code Search)
- Wolters Kluwer

In using the Licensed Software, the Client will choose to purchase access to one or more of the above referenced products offered by Mediat, hereinafter referred to as 'Licensed Content.' This Licensed Content is copyrighted, proprietary work for which all rights, including the copyright and trademark, are owned by the respective third-party Licensors. To permit Client's use of this Licensed Content, Licensors require agreement with the terms in this Exhibit E.

- 1.1 License Grant. During the term, Mediat grants to Client (hereafter 'End-User') a limited, non-exclusive, non-transferable license to access and use of the Licensed Content. This is not a sale of the Licensed Content or of a copy of the Licensed Content. Any use or attempted use of the Licensed Content other than as expressly permitted herein is a material breach of this Exhibit E. The Licensed Content were developed by Licensors for use only in the United States and its territories.
- 1.2 License Restrictions. End-User may print limited portions of the content contained within the Licensed Content for End-User's internal business use or for distribution to a patient as a written supplement to counseling by that patient's health care provider subject to the following sentence. End-User shall not: (a) print in whole or in substantial part the Licensed Content for redistribution; (b) modify, translate, create derivative works of, reverse engineer, decompile, disassemble, or attempt to derive or alter any source code of the Licensed Content or any underlying software; (c) use the Licensed Content to provide service bureau, time sharing, or similar services to third parties, including any parent, subsidiary, or other affiliate of End-User unless such use by the parent, subsidiary, or other affiliate is explicitly permitted herein and such parent, subsidiary or other affiliate is bound by the terms of this Exhibit E.; or (d) distribute, sublicense, sell, assign, transfer, rent, lease, pledge, or encumber the Licensed Content, or make any attempt to do so; (e) alter, remove, or hinder delivery of any copyright, disclaimer, or proprietary notice appearing in the Licensed Content;
- 1.3 No Competitive Products. Under no circumstances shall End-User use the Licensed Content or information contained therein or results derived therefrom, to develop a product(s) or service(s) in any format similar to, or which could be competitive with the Licensed Content.
- 1.4 End-User Modifications. Except to include patient specific information or instructions outside of the Licensor's content, End-User shall not modify, or create a derivative work from, the Licensed Content without the explicit, prior written permission of Licensor and Mediat. End-User assumes all liability for any modification made by End-User, or on behalf of End-User. Licensor and Mediat specifically disclaim all warranties of any nature, express and implied, regarding any End-User-modified Licensed Content.
- 1.5 Professional Responsibility. End-User acknowledges and agrees that the professional duty to a patient in the provision of healthcare services (including but not limited to the dispensing of drug prescriptions, provision of drug information, substitution of one drug product for another, availability of generic substitutable alternative drug products, providing instruction, and answering questions a patient may have) lies solely with the healthcare professional providing direct patient care or pharmacy services. End-User acknowledges and agrees that clinical information and screening functions in the Licensed Content are intended only as a limited supplement to, and not replacement for, the professional clinical judgment of a healthcare professional. End-User acknowledges and agrees that neither Licensor nor Mediat provides medical, pharmaceutical, or other professional advice or patient services in connection with this Exhibit E. or as part of or as a result of the provision of the Licensed Content and have no ability to verify patients' understanding of their medications and the effects of such medications. End-User acknowledges that content from the Licensed Content provided to patients: (a) is not a substitute for verbal medication counseling or physical demonstration of an administration technique by a healthcare professional, (b) may be confusing to certain patients when not interpreted by a healthcare professional, and (c) is designed solely to support the verbal information transfer by healthcare professionals and to serve as a non-comprehensive take home reference source for patients or caregivers. Therefore, as between End-User, on the one hand, and Licensor on the other hand, End-User takes full responsibility for its use of the content in, and function of, the Licensed Content in patient care. Standards and practices in medicine change as new data become available, and End-User or any healthcare professional receiving access to the software via End-User should consult a variety of sources. In addition, with respect to prescription medication, End-User or any medical professional receiving access to the software via End-User is advised to check the product information sheet accompanying each drug to verify conditions of use and identify any changes in dosage schedule or contraindications, particularly if the agent to be administered is new, infrequently used, or has a narrow therapeutic range.

- 1.6 Effect of Termination. Upon expiration or termination of the agreement between Mediat and Licensor or this Exhibit E. for any reason, the right to use the Licensed Content granted hereunder terminates. If so required by law or a regulatory agency, for archival purposes only, End-User may retain data from the Licensed Content if the data was derived in accordance with this Exhibit E. Data from the Licensed Content that has been included in a patient's electronic health record prior to termination may be retained in that electronic health record after termination.
- 1.7 Title. End-User agrees that all right, title, and interest in and to the Licensed Content and all information therein, including all copyrights and other intellectual property inherent therein or appurtenant thereto, are, and at all times shall remain, the sole and exclusive property of Licensor.
- 1.8 Disclosure. End-User shall treat the Licensed Content as confidential. End-User shall not share or disclose the Licensed Content to any individual or entity other than as set forth herein and except as necessary to provide services to End-User's patients. If End-User receives a subpoena or other legal process that requires End-User to disclose the Licensed Product to a third-party, End-User shall promptly notify Licensor and provide Licensor with an opportunity to object to such disclosure prior to disclosing the Licensed Content.
- 1.9 No Other Rights. Rights not expressly granted to End-User herein are reserved to Licensor and/or Mediat as may be the case. End-User shall not have any implied rights in, or to use of, the Licensed Content; rather, all rights applicable to End-User are expressly set forth in this Exhibit E.
- 1.10 DISCLAIMER OF WARRANTIES. LICENSOR RECEIVES DATA AND INFORMATION FROM MANY INDEPENDENT SOURCES, INCLUDING DRUG MANUFACTURERS AND GOVERNMENT AGENCIES. LICENSOR CANNOT, AND DOES NOT, INDEPENDENTLY REVIEW, VERIFY, TEST, OR SUBSTANTIATE THE CONTENT FOR ACCURACY, TIMELINESS, OR COMPLETENESS AND DISCLAIMS ALL RESPONSIBILITY FOR ANY OMISSIONS OR ERRORS THEREIN AND FOR ANY ADVERSE CONSEQUENCES RESULTING THEREFROM. IN ADDITION, THE CONTENT MAY NOT NECESSARILY COVER ALL POSSIBLE USES, DIAGNOSES, TREATMENT OPTIONS, DIRECTIONS, PRECAUTIONS, DRUG INTERACTIONS, DOSAGE LIMITATIONS, LOCAL PRACTICES, OR ADVERSE EFFECTS APPLICABLE TO A PARTICULAR HEALTH CONDITION, DRUG OR TREATMENT OR A PARTICULAR PATIENT. ALTHOUGH THE CONTENT COVERS A WIDE RANGE OF HEALTH CONDITIONS, PRESCRIPTION AND NON-PRESCRIPTION DRUGS AND TREATMENT OPTIONS, IT DOES NOT INCLUDE ALL HEALTH CONDITIONS, DRUGS, VACCINES, DEVICES, AND DIAGNOSTIC AGENTS. ACCORDINGLY, AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE ABSENCE OF A WARNING FOR A GIVEN HEALTH CONDITION, DRUG OR DRUG COMBINATION, OR TREATMENT OPTION IS NOT AN INDICATION THAT NO SUCH WARNING MAY BE RELEVANT TO A PARTICULAR PATIENT. MOREOVER, THE CONTENT THAT MAY BE PROVIDED TO END-USER OR END-USER PATIENTS MAY PROVIDE USEFUL INFORMATION ABOUT HEALTH CONDITIONS, MEDICATIONS, AND TREATMENT OPTIONS, BUT THE CONTENT IS LIMITED, AND MAY BE CONFUSING TO CERTAIN PATIENTS WHEN NOT INTERPRETED BY A HEALTHCARE PROFESSIONAL. THE CONTENT IS NOT INTENDED, AND END-USER AGREES NOT TO RELY ON, AND AGREES TO INSTRUCT ITS PATIENTS NOT TO RELY ON, THE CONTENT AS A SUBSTITUTE FOR THE KNOWLEDGE, EXPERTISE, SKILL, VERBAL COUNSELING, PHYSICAL DEMONSTRATION OF AN ADMINISTRATION TECHNIQUE, OR JUDGMENT OF PHARMACISTS, PHYSICIANS, OR OTHER HEALTHCARE PROFESSIONALS IN PATIENT CARE.

IN LIGHT OF THE FOREGOING, THE LICENSED CONTENT ARE FURNISHED BY LICENSOR "AS IS" AND LICENSOR, ITS AFFILIATES, AND ITS LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE LICENSED CONTENT OR ANY SERVICES HEREUNDER AND DISCLAIM ALL IMPLIED REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE ARISING OUT OF OR RELATED TO THIS EXHIBIT E., THE LICENSED CONTENT, OR RESULTS DERIVED THEREFROM INCLUDING, BUT NOT LIMITED TO, ANY REPRESENTATIONS AND WARRANTIES (i) REGARDING COMPREHENSIVENESS, SUITABILITY, AVAILABILITY, COMPATIBILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF THE LICENSED CONTENT (IRRESPECTIVE OF ANY COURSE OF DEALING, CUSTOM, OR USAGE OF TRADE) OR ANY WARRANTY THAT THE CONTENT SATISFIES GOVERNMENT REGULATIONS. NO LICENSOR EMPLOYEE, CONSULTANT, REPRESENTATIVE OR AGENT IS AUTHORIZED TO MAKE ANY STATEMENT THAT ADDS TO OR AMENDS THE WARRANTIES OR LIMITATIONS CONTAINED IN THIS EXHIBIT E.

Client Name: Virginia Military Institute

Signature: Lynn W. Carmack Date: 22 January 2019

Print Name: MAJ Lynn Carmack Title: Asst. Director of Procurement Services