

**Vital Element, Inc.**  
**WEB SITE DEVELOPMENT**

**APPLICATION SERVICE PROVIDER (ASP)**  
**SOFTWARE LICENSE AGREEMENT**

THIS AGREEMENT is made this 1<sup>st</sup> day of June, 2010 by and between Vital Element, Inc. (VEI), a Delaware corporation having its primary place of business at 28470 Lake Avenue, Holland, MI ("**Vendor**"), and Largesse Hospital, a nonprofit corporation having its primary place of business at ~~1946 Bailey Building & Loan Drive, Suite One, Los Angeles, CA~~ **1234 Lutheran Health Way, South Heaven, MI 00001** ("**HOSPITAL**").

**RECITALS**

WHEREAS Vendor is in the business of providing comprehensive medical web site design, web-based medical marketing, and web-based medical efficiency solutions using an Application Service Provider ("**ASP**") model;

WHEREAS HOSPITAL has chosen Vendor's SaaS web design and content management services (hereinafter "**Vendor Solution**"), ~~through a~~ **to be consistent and compliant with the Vendor submitted** Request for Proposal process; and

WHEREAS HOSPITAL desires to license access to and use of the Vendor Solution using an ASP delivery model, such that Vendor shall host the application.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, HOSPITAL and Vendor hereby agree as follows:

**TERMS & CONDITIONS**

1. Definitions.

1.1 Acceptance. "**Acceptance**" of the Vendor Solution means completion of the acceptance testing process set forth in Section 3 of this Agreement.

1.2 Agreement. "**Agreement**" includes this agreement and its Schedules. **Schedules include:**

- A – Target date for delivery
  - Timeline for implementation
  - Designated environment
- B - Fees,
  - Training content
  - Process and timeframe for changes and corrections
- C - Web content modifiable by HOSPITAL
  - Data to be kept on Vendor servers
  - Data to be kept on HOSPITAL servers

1.3 Access or Delivery Date. "**Access**" or "**Delivery Date**" is the date on which login access has been given to HOSPITAL.

1.4 Designated Environment. "**Designated Environment**" means the computer equipment and Solution operating system described on Schedule A.

1.5 Documentation. "**Documentation**", means the user, system and installation documentation for Vendor Solution, if any.

1.6 Downtime: "**Downtime**" is the period in which packets are not being sent and received properly from Vendor servers, with the exceptions noted in Section 11 herein.

1.7 Error. "**Error**" means a material failure of the Solution to function in conformity with the Specifications.

1.8 Initial Fee. "**Initial Fee**" means the License Fees HOSPITAL shall pay as specified in the attached Schedule B.

1.9 License. "**License**" means the license granted by Vendor to HOSPITAL to access and use the Solution and Documentation in accordance with the terms and conditions of this Agreement.

1.10 Schedule. "**Schedule**" refers to any schedule attached to this Agreement, or any subsequently prepared document that the parties agree in writing to be considered a Schedule.

1.11 Solution. "**Solution**" means the Vendor Solution, and any upgrades or enhancements **agreed to by the HOSPITAL** and implemented by Vendor.

1.12 Target Date. "**Target Date**" means the date set forth on Schedule A hereto, by which both parties anticipate Delivery of the Solution.

1.13 Warranty Period. "**Warranty Period**" means ~~thirty (30)~~ **90 (ninety)** days from the date of Acceptance.

1.14 Renewal fee. "**Renewal Fee**" means the annual fee to be paid by the HOSPITAL for the license.

## 2. Solution License.

2.1 License. Vendor grants HOSPITAL a non-exclusive, non-transferable annual subscription license for limited access to the Vendor Solution ~~solely for its internal operations~~ **for its business purposes.**

2.2 Distribution. HOSPITAL may distribute login access ~~to a maximum of 2500 of~~ to its employees and/or physicians, ~~as identified on Schedule B.~~ Except as expressly provided herein, HOSPITAL shall not:

- (i) make available ~~or allow access to~~ all or part of the Vendor Solution to any third party by assignment, sublicense or by any other means;

(ii) copy, adapt, reverse engineer, decompile, disassemble, or modify, in whole or in part, any of the Vendor Solution or Documentation for the purpose of selling or distributing it to a third party;

(iii) access or use the Vendor Solution to operate in or as a time-sharing, outsourcing, or service bureau environment, ~~or in any way allow third party access to the Solution;~~ or

~~(iv) make the login access available to, or allow access to the Vendor Solution to, more than 2500 concurrent users.~~

2.3 Modifications. In order to control and protect the stability of the cloud computing system, HOSPITAL is **allowed to change only the content of web pages and frames as established in Schedule C.** HOSPITAL is otherwise prohibited from modifying or customizing the Vendor Solution without the prior express written authorization of Vendor.

### 3. Acceptance, Installation, Training and Upgrades.

3.1 Acceptance. Vendor shall use reasonable efforts to deliver the access codes or keys on or about the Target Date. HOSPITAL shall have ~~ten (10)~~ **thirty (30)** days from the Delivery Date to perform acceptance testing. HOSPITAL's Acceptance of the Solution shall occur at the earlier of HOSPITAL's operational use of the Vendor Solution, or the expiration of ~~ten (10)~~ **thirty (30)** days from the Delivery Date absent written notice by HOSPITAL to Vendor of any Error(s). If HOSPITAL provides written notice to Vendor of any Error(s) prior to the expiration of such ~~ten~~ **thirty (30)** day period and Vendor verifies the alleged Error(s), the Solution shall be accepted **at the earlier of HOSPITAL's operational use of the Vendor Solution, or the expiration of ten (10) thirty (30) days following upon Vendor's correction of such Error(s).**

3.2 Training. If requested by HOSPITAL, within the first 90 days of this Agreement, Vendor shall provide ~~three (3)~~ **twenty-four (24)** hours of ~~one-on-one~~ **Core Team** training at a date and time mutually agreeable to Vendor and HOSPITAL at the fees noted in Schedule B **for the purposes noted in Schedule C.** Travel time, travel expenses and accommodation expenses, incurred by the Vendor, as part of the on-site training, shall be paid by HOSPITAL, upon the completion of the on-site training.

#### 3.3 Technical Support.

3.3.1 Standard Support. Vendor shall provide telephone and email technical support 24/7, and 365 days/year. **If the issue is responded to in a single message, no Support Ticket is needed. In the event that a support contact results in the need open a Support Ticket, the HOSPITAL shall be entitled to 20 technical contacts Support Ticket solutions during the first year and 10 technical support contacts Support Ticket solutions during each subsequent year. The HOSPITAL will be notified if Vendor considers the contact to require a Support Ticket, and will have the option to decline opening the Ticket and discontinue the contact.**

3.3.2 Enhanced Support. Notwithstanding the above, if Vendor makes a reasonable business determination that the technical support requested by HOSPITAL, pursuant to this section, will entail detailed, specialized maintenance or support services, different in kind or amount from those provided to other similar customers of Vendor (including, but not limited to, assistance to enable the interfacing or operation with a non-

supported, unusual or proprietary system), Vendor shall notify HOSPITAL that such requested support is considered an additional service which will be subject to additional fees at Vendor's then-current fee schedule. **The HOSPITAL will have the option to decline the additional service.**

3.4 Upgrades. Upgrades and enhancements to the Solution may be made from time to time at Vendor's sole discretion and shall be implemented by Vendor. **The HOSPITAL will have the option of declining the upgrade or enhancement for the duration of this contract.** If an upgrade requires the use of ancillary hardware or Solution **for the purposes of the web site access to the HOSPITAL's information systems**, it is HOSPITAL's obligation to purchase and install the required ancillary hardware or Solution.-It is HOSPITAL's obligation to verify the accuracy of the data in the updated Solution before it is used.

### 3.5 HOSPITAL's Obligations.

3.5.1 Environment. HOSPITAL shall obtain, install and maintain the ~~Designated~~ its own Information Systems Environment, ~~as described in Schedule A of this Agreement,~~ in good working order and insure the proper operation and maintenance of ~~the Designated Environment.~~ **for the purposes of allowing secure and appropriate access of the website to designated databases in order to allow proper function of the website.** This will include hardware and software, and battery back-up with electrical surge protectors and necessary devices to prevent damage to the hardware and software during its normal operation. **The HOSPITAL reserves the right to shut down access to particular sites in the event of malfunction that puts security or data integrity at risk.**

3.5.2 Internal Testing Restrictions. HOSPITAL shall ~~not~~ **only** use the Vendor **designated beta site** services for internal **testing, including** stress testing or similar load testing that would burden the Vendor **operational** servers. **Due to the shared nature of this server any stress testing must be agreed to and scheduled with the Vendor.**

**3.6 Vendor's Obligations – the vendor will provide server space with a beta site for upload and testing of data prior to moving it to the operational pages if needed. The capabilities and restrictions of this site will be defined by the Vendor, but it will be capable of supporting a real-time site for effective testing of updates and upgrades to the system.**

## 4. Fees and Payment

4.1 Initial Fee. HOSPITAL shall pay the Initial Fee in accordance with the payment schedule set forth in Schedule B. Vendor shall invoice any additional costs reasonably incurred by Vendor in the delivery of the Solution as they are incurred. HOSPITAL shall make payment of the Initial Fee and additional costs to Vendor within thirty (30) days from the date of invoice.

4.2 Renewal Fee. The HOSPITAL shall pay a license renewal fee annually on January 15th for that calendar year. **The fee will remain constant for the duration of the contract period, subject to negotiation at that time.** If the renewal fees are not paid, the HOSPITAL will lose the

ability to access the Solution and read the data stored in the Solution **except for a one time integrity verified download of any data stored on the Vendors' servers as noted in the Term and Termination clause.** At future dates, Vendor may provide additions to the Solution that has been purchased or licensed from a third party. The price for such third party Solution may increase HOSPITAL's cost and/or the Annual Renewal Fee. Prior to the time that the annually renewal fee is due, HOSPITAL will be offered the opportunity to decide whether or not it would like to obtain those new capabilities in its system.

4.3 Additional Services. In the event that the HOSPITAL shall expand the number of users beyond that identified in Section 2 and Schedule B, it shall be liable for an additional licensing fee that shall be payable to the Vendor. Said fee shall be consistent with the then prevailing rates of the Vendor and shall be paid by HOSPITAL within 15 days after such additions. On or before January 15 of each year the HOSPITAL shall certify to the Vendor, in writing, of the number of employees and/or physicians using the Solution.

4.4 Audit. ~~HOSPITAL agrees that Vendor shall have the right to inspect HOSPITAL's records or to have such records audited by a third party designated by Vendor upon ninety (90) days prior written notice for the purposes of determining whether all required license fees have been paid to Vendor, provided that any such third party agrees in writing in advance to protect the confidentiality of all confidential information, and not to disclose such confidential information, except as may be necessary for Vendor to enforce its rights under this Agreement. In the event that an audit reveals that license fee payments have been underpaid, then HOSPITAL shall immediately pay to Vendor the underpaid amount plus interest from the date the payment was first due at the maximum rate permitted by law. All inspections or audits of HOSPITAL's records will be conducted at Vendor's expense unless the inspection discloses any underpayment of license fees, in which case HOSPITAL shall bear the full cost of the audit, including, without limitation, reasonable accountant's and attorney's fees.~~

**Whereas this is a hosted solution and the records of concern to the Vendor are the number of concurrent users on their servers, it will be the responsibility of the Vendor to monitor this activity and report at the end of the contract term. This information will be used to negotiate future fees, as necessary. It is the right of the HOSPITAL to inspect Vendors records or to have such records audited by a third party designated by HOSPITAL upon ninety (90) days prior written notice for the purposes of determining whether the validity of the data, provided that any such third party agrees in writing in advance to protect the confidentiality of all confidential information, and not to disclose such confidential information, except as may be necessary for HOSPITAL to enforce its rights under this Agreement.**

4.5 Tax. HOSPITAL shall be responsible for any applicable sales or use taxes or any value added or similar taxes payable with respect to the licensing of the Solution, or arising out of or in connection with this Agreement, other than taxes levied or imposed based upon Vendor's income. In the event that Vendor pays any such taxes on behalf of HOSPITAL, Vendor shall invoice HOSPITAL for such taxes and HOSPITAL agrees to pay such taxes in accordance with this Agreement.

4.6 Time is of the Essence. The Parties agree that time is of the essence in this agreement and that Vendor's Delivery Date shall be ~~September~~ **October** 1, 2010. If the Delivery is delayed for any reason other than through HOSPITAL's fault or negligence, than HOSPITAL shall have a 1% deduction in the first year's license fees for every delay of 1-week, or part of 1-week **for the first month, then 1% for each day, or part of 1 day, thereafter. This also applies to requested changes that are not accomplished within the timeframe established in Schedule B.**

4.7 Return on Investment Warranty. Vendor recognizes that HOSPITAL's investment in the Vendor Solution will increase HOSPITAL's annual operational budget, so Vendor represents and warrants that HOSPITAL will ~~achieve an annual 5% return on investment within the first 3-years of use.~~

## 5. Proprietary Rights.

HOSPITAL acknowledges and agrees that the copyright, patent, trade secret, and all other intellectual property rights of whatever nature in the Solution, Documentation and Specifications are and shall remain the property of Vendor, and nothing in this Agreement should be construed as transferring any aspects of such rights to HOSPITAL or any third party.

## 6. Confidentiality.

6.1 Confidential Information. "**Confidential Information**" shall mean the Solution, Documentation, Specifications, and terms and conditions of this Agreement, **as well as any proprietary information of the HOSPITAL, including but not limited to financial data, employee information, patient information [including the requirements of the Healthcare Information Portability and Privacy Act (HIPPA)], and hospital operations.** Both Vendor and HOSPITAL acknowledges the confidential and proprietary nature of the Confidential Information and agrees that it shall not reveal or disclose any Confidential Information for any purpose to any other person, firm, corporation or other entity, other than Vendor or HOSPITAL's employees with a need to know such Confidential Information. Vendor and HOSPITAL shall safeguard and protect the Confidential Information from theft, piracy or unauthorized access in a manner at least consistent with the protections **the Vendor and/or** HOSPITAL uses to protect its own most confidential information. Vendor and HOSPITAL shall inform its employees and all users of their obligations under this Agreement, and shall take such steps as may be reasonable in the circumstances, or as may be reasonably requested by Vendor, to prevent any unauthorized disclosure, copying or use of the Confidential Information. Vendor and HOSPITAL acknowledges and agrees that in the event of the Vendor or HOSPITAL's breach of this Agreement, ~~Vendor~~ **the other party** will suffer irreparable injuries not compensated by money damages and therefore shall not have an adequate remedy at law. Accordingly, ~~Vendor~~ **the offended party** shall be entitled to a preliminary and final injunction without the necessity of posting any bond or undertaking in connection therewith to prevent any further breach of these confidentiality obligations or further unauthorized use of Confidential Information. This remedy is separate and apart from any other remedy ~~Vendor~~ **the offended party** may have.

6.2 Unauthorized Disclosure. HOSPITAL shall notify Vendor immediately upon discovery of any prohibited use or disclosure of the Confidential Information, or any other breach of these confidentiality obligations by HOSPITAL, and shall fully cooperate with Vendor to help Vendor regain possession of the Confidential Information and prevent the further prohibited use or disclosure of the Confidential Information.

## 7. Warranty.

7.1 Limited Warranty. Each party will perform its obligations hereunder in a good and workmanlike manner. The ~~sole~~ **primary** remedy and ~~exclusive~~ liability for breach of this warranty, not exclusive of other remedies in this agreement, shall be re-performance of

the breaching party's obligations **within a timeframe not to exceed 30 (thirty) days unless otherwise agreed to in writing.**

7.2 **General Disclaimer:** Vendor specifically does not warrant that the licensed Solution will meet all of HOSPITAL's requirements. **Regarding 3<sup>rd</sup> party vendor solutions, the Vendor cannot guarantee** that patches or workarounds will always be **provided possible,** or that Vendor will detect every bug in its 3<sup>rd</sup> party vendor' and HOSPITAL's systems.

Vendor disclaims any and all liability resulting from or related to any breach of Internet security or disruption of HOSPITAL's connections to the Internet, due to any reason beyond Vendor's control.

~~7.3 Limited Disclaimer: that t~~The use of the Licensed Solution ~~will~~ **may not** be uninterrupted or error-free, ~~or that errors will~~ **may not be immediately correctable** in Licensed Solution updates, ~~or in every case, , or that these~~ **and these** systems ~~will~~ **may not** operate without error after testing **but remedies are available to the HOSPITAL under section 10.2 based on standards set in Schedule B.**

7.34 **Exclusive Warranty:** THE ABOVE WARRANTY IS EXCLUSIVE. VENDOR MAKES NO OTHER WARRANTY OF ANY KIND, WHETHER WRITTEN OR ORAL, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE RELATING TO THE TERMS OF THE SOLUTION, OR ANY MATERIALS OR SERVICES FURNISHED OR PROVIDED TO HOSPITAL UNDER THIS AGREEMENT.

~~7.4 As-Is Basis As Defined: THE SOLUTION AND SERVICES ARE PROVIDED TO HOSPITAL UNDER THIS AGREEMENT ON AN "AS-IS" BASIS. VENDOR SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.~~

7.5 **Compliance with Law.** Vendor ~~makes no representation that the Solution, or~~ **agrees to work with HOSPITAL to assure that** the records or forms ~~it that are~~ **created** comply with any **and all** state or federal laws or regulations or any third party's requirements regarding record keeping or confidentiality, **required of the Vendor or HOSPITAL.** Ensuring compliance with all laws and regulations is the ~~sole~~ **joint** responsibility of HOSPITAL **and Vendor.**

## 8. Indemnity.

8.1 **Indemnification.** Vendor hereby indemnifies HOSPITAL against any claim that the Solution, furnished and used within the scope of this Agreement, infringes any U.S. registered copyright or patent, provided that:

- (i) Vendor is given prompt notice of the claim;
  - (ii) Vendor is given control over the defense and/or settlement of the claim, and HOSPITAL fully cooperates with Vendor in such defense and/or settlement;
  - (iii) HOSPITAL does not prejudice in any manner Vendor's conduct of such claim;
- and
- (iv) the alleged infringement is not based upon the use of the Solution in a manner prohibited under this Agreement, in a manner for which the Solution was not designed, or in a manner not in accordance with the Specifications.

8.2 **Liability.** The foregoing states Vendor's entire obligation and liability with respect to the infringement of any property right.

8.3 Infringement. HOSPITAL hereby indemnifies Vendor against any claim for alleged infringement of any U.S. registered copyright or patent, arising out of the use of the Solution by HOSPITAL in any manner prohibited by this Agreement.

## 9. Limitation of Liability.

9.1 LIMITATION. VENDOR SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT, OR OTHERWISE, FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE LIABILITY OF VENDOR TO HOSPITAL FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNT PAID TO VENDOR BY HOSPITAL UNDER THIS AGREEMENT. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. BOTH PARTIES UNDERSTAND AND AGREE THAT THE REMEDIES AND LIMITATIONS HEREIN ALLOCATE THE RISKS OF PRODUCT AND SERVICE NONCONFORMITY BETWEEN THE PARTIES AS AUTHORIZED BY THE UNIFORM COMMERCIAL CODE AND OF OTHER APPLICABLE LAWS. THE FEES HEREIN REFLECT, AND ARE SET IN RELIANCE UPON, THIS ALLOCATION OF RISK AND THE EXCLUSION OF CONSEQUENTIAL DAMAGES SET FORTH IN THIS AGREEMENT.

9.2 Force Majeure. Neither party shall be under any liability for any loss or for any failure to perform any obligation hereunder due to causes beyond its control including without limitation industrial disputes of whatever nature, terrorist acts, power loss, telecommunications failure, acts of God, or any other cause beyond its reasonable control. **This does NOT include industrial disputes (i.e. workforce strikes).**

## 10. Term and Termination.

10.1 Term and Termination. The License granted herein shall remain in full force and effect for one (1) year (“**Initial Term**”), and thereafter shall automatically renew for one (1) year terms (“**Renewal Terms**”) for so long as HOSPITAL shall annually renew this License according to the payment schedule in Schedule B, or as provided in Section 10.2 or 10.3 herein. If said fee is not paid, HOSPITAL's license to use the Solution shall terminate and all access to Vendor's Solution shall be terminated. **This termination of access will be subject to the one time integrity verified download of any data on the Vendor servers outlined in Section 10.3.**

### 10.2 Breach.

Vendor may terminate this Agreement and the License, without prejudice to any other remedy Vendor may have, immediately without further obligation to HOSPITAL, in the event of:

- (i) any breach by HOSPITAL of Sections 2, 5 or 6 (**License, Propriety Right or Confidentiality**) of this Agreement which cannot be remedied within 180 days of Vendor's notice to HOSPITAL of the breach and Vendor's intent to terminate the License;
- (ii) any material breach of Sections other than those set forth above which cannot be remedied within six (6) months of Vendor's notice to HOSPITAL of the breach and Vendor's intent to terminate the License; or



(iii) HOSPITAL's making an assignment for the benefit of its creditors, the filing under any voluntary bankruptcy or insolvency law, under the reorganization or arrangement provisions of the United States Bankruptcy Code, or under the provisions of any law of like import in connection with HOSPITAL, or the appointment of a trustee or receiver for HOSPITAL or its property.

HOSPITAL may terminate the License, without prejudice to any other remedy HOSPITAL may have, in the event of any material breach of this Agreement that is not remedied within twenty four (24) hours of HOSPITAL's notice to Vendor of the breach and HOSPITAL's intent to terminate the License. Termination shall not relieve HOSPITAL's obligation to pay all amounts that are due and payable or which HOSPITAL has agreed to pay **until all remedies of this contract are completed.** Additionally, HOSPITAL terminate this Agreement and the License, without prejudice to any other remedy HOSPITAL may have, immediately without further obligation to Vendor, in the event of:

(i) any breach by Vendor of Sections 2, 5 or 6 (License, Propriety Right or Confidentiality) of this Agreement which cannot be remedied within 180 days of Vendor's notice to Vendor of the breach and Vendor's intent to terminate the License;

(ii) any material breach of Sections other than those set forth above which cannot be remedied within six (6) months of Vendor's notice to HOSPITAL of the breach and Vendor's intent to terminate the License; or

(iii) Vendor making an assignment for the benefit of its creditors, the filing under any voluntary bankruptcy or insolvency law, under the reorganization or arrangement provisions of the United States Bankruptcy Code, or under the provisions of any law of like import in connection with Vendor, or the appointment of a trustee or receiver for Vendor or its property.

10.3 Remedy. Both parties agree that the damages that HOSPITAL will suffer from a material breach of this Agreement by Vendor will be difficult to quantify. Therefore, upon a material breach of this Agreement by Vendor, HOSPITAL shall be entitled to recover liquidated damages in an amount not less than \$100,000 per breach from Vendor. Such liquidated damages shall not serve as a limitation of the amount of damages that HOSPITAL may recover from Vendor. In addition to any other remedy that Vendor may have at law, in equity or under this Agreement, upon the occurrence of any breach set forth in Section 10.2 above, HOSPITAL shall have the right to immediately enter Vendor's premises, access Vendor's computer systems and to seize any copies of the Solution or Documentation or any modifications or materials derived thereof. If the latter event occurs, paper **and integrity verified electronic** copies of all patients' records in the current calendar year will be printed from the system and provided to HOSPITAL for its use. **The electronic format will be determined at the time that will allow transfer to a new system.**

10.4 Cessation of Use. Upon termination of this Agreement, HOSPITAL shall cease using the Solution and Documentation and promptly return all copies of the Solution, Documentation and all other Confidential Information in its possession or control. HOSPITAL shall delete all copies of such materials residing in on or off-line computer memory, and destroy all copies of such materials that also incorporate HOSPITAL's Confidential Information. HOSPITAL shall, within five (5) days from the effective date of the termination, ~~certify in writing by an officer or director of the HOSPITAL that all copies of the Solution and Documentation have been returned, deleted or destroyed.~~

## 11. Service Commitment

11.1 Scheduled Uptime: Vendor shall use reasonable efforts to make access to Vendor available twenty-four (24) hours per day, seven (7) days a week, excluding:

(i) Scheduled downtime for systems maintenance, including without limitation diagnostics, upgrades, and operations reconfiguration; and

(ii) Unscheduled downtime caused by forces beyond the immediate control of Vendor, including Solution defects, hardware failures, or downtime caused by HOSPITAL's network, the Internet or force majeure.

11.2 Unscheduled Downtime: In the event that Vendor servers experience Downtime, other than as permitted above, then Customer may be entitled to a credit of up to 5% of that month's license fee. The credit described in this paragraph is HOSPITAL's ~~sole and exclusive~~ **initial** remedy related to Downtime. **In the event that Downtime exceeds 20% of available time in any given 30 day interval, or more than 10% in each of 2 separate 30 day intervals, the HOSPITAL may consider this breach of contract. It is expected that the Vendor will have and maintain plans for system redundancy, for backup and disaster recovery plan that will be implemented to prevent this occurrence.**

## 12. Source Code Escrow

12.1 Within thirty (30) days after HOSPITAL has paid the initial Software fees, Vendor shall place and maintain a current copy of all Solution Software source code in escrow with a reputable escrow agent.

12.2 The parties agree that the source code will be released from escrow:

- a. Permanently, if Vendor announces that it is discontinuing support for all versions of the Solution, or if Vendor has filed a voluntary proceeding under any chapter of the federal bankruptcy laws, or ceases to do business as a going concern without making arrangements for continued support of the Solution, or
- b. Temporarily, if Vendor fails to correct or provide a workaround for a business-critical error in the Solution for a period exceeding 30 business days, and for the length of time needed for HOSPITAL to correct or provide a workaround for such error. In either case, HOSPITAL may use such copy of the Source Code solely for purposes of supporting HOSPITAL's use of the Solution pursuant to the License; HOSPITAL may not make or distribute copies of the Source Code, nor create derivative works based thereon, or make or distribute copies of such derivative works, except to the extent necessary for such purposes.

12.3 In the event Vendor shall release the Source Code to HOSPITAL, HOSPITAL shall have a limited, non-exclusive license to use it solely to maintain, modify or correct the Solution Software for use within the scope of the License. HOSPITAL acknowledges that the Source Code is highly confidential proprietary information of Vendor and, as such, is subject to the same restrictions on use, disclosure and maintenance of confidentiality that apply under this Agreement.

12.4 If HOSPITAL's right to use Source code is temporary, then **HOSPITAL** will return its escrow copy of the Source Code to the escrow agent upon completion of HOSPITAL's use rights and will certify to Vendor in writing that HOSPITAL has destroyed all other

copies. The intellectual rights of any solution created by the HOSPITAL in this situation will remain separate from the Vendor Solution. License and Rights to this solution will be the property of the HOSPITAL under these conditions, but do not include License or Rights to the Vendors Solution.

13. Conflict of Interest. Vendor and HOSPITAL hereby represent and warrant that, to the best of their knowledge, there are no actual or apparent conflicts of interest that would compromise either the integrity of the RFP bidding process leading to this Agreement, or the performance of Services called for by the attached SOW(s), except as fully disclosed below:

13.1 From Vendor: Bonnie Livingston, the Vendor's commission-based sales representative for this project, is the ex-sister-in-law of Wendy MacLeod who is HOSPITAL's CEO.

13.2 From HOSPITAL: \_\_\_\_\_.

14. General.

14.1 Headings. The headings used in this Agreement are for convenience only and are not intended to be used as an aid to interpretation.

14.2 Validity. If any part of this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected.

14.3 Binding. This Agreement will be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns. HOSPITAL may not assign its rights or obligations under this Agreement without the prior written consent of Vendor.

14.4 No Waiver. Failure by either party to exercise any right or remedy under this Agreement does not signify acceptance of the event giving rise to such

14.5 Solicitation. The parties hereto shall not solicit the employment of nor employ any of each others' personnel who has been directly involved in the development, sale, installation, or support of the Solution for a period of two (2) years from the later of the termination of such individual's employment at the respective party or the last date of Acceptance of any Solution.

14.6 ~~Georgia~~ Michigan Law. This Agreement shall be deemed to have been executed in the State of ~~Georgia~~ Michigan and will be governed by and construed in accordance with the laws of the State of ~~Georgia~~ Michigan. The parties hereby consent to the exclusive jurisdiction of the courts of the State of ~~Georgia~~ Michigan or the United States District Court for the District of ~~Georgia~~ Michigan for the purpose of any action or proceeding brought by either of them in connection with this Agreement.

14.7 Notice. Unless otherwise agreed to by the parties, any notice required or permitted to be given or delivered under this Agreement shall be delivered to the addresses first set forth in this Agreement. Notice shall be deemed to have been received by any party, and shall be effective, (i) on the day given, if personally delivered or if sent by confirmed facsimile transmission, receipt verified, or (ii) on the third day after which such notice is deposited, if mailed by certified, first class, postage prepaid, return receipt requested mail.

14.8 Attorneys' Fees. The non-prevailing party shall be responsible for reasonable attorneys' fees associated with the enforcement of the terms of this Agreement or the collection of any amounts due under this Agreement.

14.9 Survival. Sections 2.3, 4.4, 5, 6, 8, 9, 10 and 11 shall survive the termination of this Agreement for any reason.

14.10 Entire Agreement. This Agreement and its Schedules comprise the entire agreement between the parties regarding the subject matter hereof and supersedes and merges all prior proposals, understandings and all other agreements, oral and written between the parties relating to the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the day, month and year first set forth above.

VITAL ELEMENT, INC.

By: \_\_\_\_\_  
Barry Coleman  
VP, Hosting Sales

LARGESSE HOSPITAL

By: \_\_\_\_\_  
Wendy MacLeod, MD  
Chief Executive Officer

## SCHEDULE A

### SPECIFICATIONS

**TARGET DATE** ... for Vendor Enterprise Solution Delivery to Hospital:  
October 1, 2010

Implementation will be phased based on the RFP timeline, as established.

Initial meetings	August 10, 2010
Web Design, Build and Validate	August 15, 2010 – November 1, 2010
Final site testing and usability analysis	November 1-30, 2010
Phase I implementation	December 1, 2010
Phase II implementation	February 15, 2011
Phase III – Implementation Completed	March 31, 2011

#### DESIGNATED ENVIRONMENT:

Vital Element development services and software offerings will all operate on the following technologies:

FLASH, .Net 2.0 and 3.0, JavaScript, PHP, SQLSever 2005 and 2008, and AJAX.

SOA principles are implemented where possible and Vital Element is embarking on Apple iPhone/iPad applications as well.

The hosted servers are all blades with complete failover, replication, dual firewalls and guaranteed HIPAA compliance. **This equipment and the above environment are owned and operated by VEI**

**The HOSPITAL shall own and maintain necessary interfaces to allow access to its' databases for the purpose of populating data on dynamic web pages.**

**SCHEDULE B**

FEES

DESCRIPTION	AMOUNT
Vital Element Website Development Service <i>as per RFP</i>	\$ 250,000.00
Search Engine Optimization (SEO) - Large City Annual Fee	\$ 3,000.00
Search Engine Marketing (SEM) - 50 Words - Annual Fee	\$ 5,000.00
<i>SUBTOTAL</i>	\$ 258,000.00
<i>TAX RATE</i>	8.00%
<i>SALES TAX</i>	\$ 20,640.00
12% Discount	\$ 30,960.00
<b>TOTAL</b>	<b>\$ 247,680.00</b>

Training – The purpose of training is to provide the Core Team with the skills and knowledge necessary to make routine content changes to web pages as delineated in Schedule C. This training will include:

- Access to the Beta site for upload and testing
- Management of frames within the web pages
- Uploading of content to frames
- Acceptable formatting for data for upload
- Methods by which uploads must be checked for integrity, function and security.
- Reporting of activity and results on the beta site.
- Other elements of web site content management appropriate to the activity set forth in the RFP.

Process and time frame for changes to the system: (including corrections to the system after they are identified)

- Change/correction is identified and described *[start]*
- Vendor determines necessary steps to accomplish the task (and additional cost if applicable) *[ten (10) days after start]*
- HOSPITAL determines if scope of project is appropriate to the organizations goals based on the Vendors determination of requirements *[seven(7) days after Vendor determination]*
- Upon agreement to go ahead from HOSPITAL, Vendor builds project. *[ten (10) days from go ahead]*
- Upon completion, HOSPITAL performs acceptance testing *[ten (10) days from completion]*
- In the event of errors, Vendor has seven(7) days to correct errors and resubmit to HOSPITAL. HOSPITAL then has seven (7) days to perform new acceptance testing.

- In the event that errors are not corrected at this point, HOSPITAL may seek Remedies as defined in Section 10.3, or as agreed upon in writing at the outset of the project.
- These timeframes represent the MAXIMUM time for project stages. Shorter times are expected and encouraged.

DESCRIPTION	AMOUNT
Vital Element Website Development Service	\$ 185,000.00
Add On: Employment Manager - -	\$ 35,000.00
Add On: Events Manager - -	\$ 5,000.00
Add On: Physician Mini-Sites (30 sites) -	\$ 30,000.00
Add On: Doctor Blogs and Newsletters	\$ 11,500.00
Search Engine Optimization (SEO) - Large City Annual Fee	\$ 3,500.00
Search Engine Marketing (SEM) - 50 Words - Annual Fee	\$ 5,000.00
- - <b>SUBTOTAL</b>	\$ 275,000.00
- - <b>TAX RATE</b>	8.00%
- - <b>SALES TAX</b>	\$ 22,000.00
12% Discount - - <b>OTHER</b>	\$ 35,640.00
- - <b>TOTAL</b>	\$ 261,360.00

Other Add-On Options	Pricing
Website requirements	Set Up fee: \$900
Hospital Hours (Office/ Visitor)	\$150
Department Hours	\$150
Photo Gallery (per photo)	\$250
Contact Information	\$150
Driving Directions	\$150
Information for Volunteers	\$150
Solicit Volunteers	\$150
All future vendor changes to above website requirements	\$50/change
Annual Website Maintenance	\$55,000
<b>Physician Portal</b>	Set Up fee: \$3,000
Physician Information (per physician)	\$250
Review Lab/Rad/Transcription	\$34,500
Update patient record	\$1,200
Check patient status	\$250
Decision Support Tools	\$900
All future vendor changes to above physician portal	\$50/change
<b>Patient Portal</b>	Set Up fee: \$3,000
Review Lab results	\$2,500
Bill Pay	\$500
Pre-registration	\$175
Update patient information	\$250
Appointment Scheduling	\$175
Patient email	\$175
Communication with medical staff	\$175
Health Management Tools	\$1,290
All future changes to above patient portal	\$50/change
<b>Employee Intranet</b>	Set Up fee: \$900
Secure timecard transactions	\$500
HR functions	\$500
All future changes to above ee	



intranet	\$50/change
<b>Online Physician Directory</b>	Set Up fee: \$900
Search by last name	\$175
Search by location	\$175
Search by Specialty	\$175
All future changes to above online physician directory	\$50/change
<b>Health Care Videos</b>	Production, editing setup: \$41,500
Surgical Procedures	\$1,750
Physician Introductions	\$1,750
All future changes to above healthcare videos	\$50/change
<b>News/Events</b>	Set Up fee: \$900
Calendar of Events (per update)	\$250
Classes Offered	\$150
Health News	\$150
Wellness Library	\$150
All future changes to above news/events	\$50/change
<b>Virtual Tour of HOSPITAL</b>	Set Up fee: \$900
Rooms	\$1,500
Gift Shop	\$150
Virtual Greeting Card	\$150
All future changes to above virtual tours	\$50/change
<b>Cafeteria/Coffee Shop</b>	Set Up fee: \$900
Menu	\$150
Specials	\$150
All future changes to above Cafeteria/Coffee Shop	\$50/change
<b>Employment</b>	Set Up fee: \$900
Employment Opportunities	\$150
Application/Resumé Submission	\$150
All future changes to above Employment	\$50/change
<b>Administration Interface</b>	\$2,500/me
Manage User Settings	
Manage Portals	
Update News/Events	
Manage Employment Section	
Update Static Web Content	
Web Analytics	\$225/hr

All future changes to above Administration Interface	\$50/change
Search Engine Positioning and costs	-
Hardware	<del>\$5500/yr</del>
Software	\$7500/yr
Labor	\$255/hr
Training (this section may be modified by section 3.2 of the license agreement)	\$4575/day
User Help Desk Support (full 24x7 package, included in licensing fees for Year 1 only)...this section may be modified by section 3.3 of the license agreement	\$2500/yr after year 1
Web Hosting	\$36,000/mo with annual 3% escalator clause after year 1
Licensing	\$11,000/yr with annual 3% escalator clause after year 1

## **Schedule C**

Web site content to be modified by Core Team:

Calendars

Call Schedules

Practice Mini-site descriptions

Contact information

Public and Event announcements

Job postings

Links to other sites

Newsletters

Photos

Other content as agreed to in writing between VEI and the HOSPITAL

Content likely to be kept on VEI servers, (representing data to be included in a one-time integrity verified download at termination if necessary) including but not limited to:

Discussion boards

Web page/frame content

Content to be kept on HOSPITAL but accessed to populate search pages for users (transient data):

Forms completed by users

Data from hospital databases including but not limited to PACS, LIS, EMR