

Crossroads Software Maintenance and Enhancement Services



Office of Procurement and General Services

109 Governor Street

Richmond, Virginia 23219

CROSSROADS SOFTWARE MAINTENANCE AND ENHANCEMENT SERVICES

Contract # VDH-21-707-0156

between

Virginia Department of Health

and

GCOM Software LLC

Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, sexual orientation, gender identity, political affiliation, or veteran status or any other basis prohibited by state law relating to discrimination in employment. Faith-based organizations may request that the issuing agency not include subparagraph 1.f in General Terms and Condition C. Such a request shall be in writing and explain why an exception should be made in that invitation to bid or request for proposal.

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Crossroads Software Maintenance and Enhancement Services

This Crossroads Software Maintenance and Enhancement Services CONTRACT (“**Contract**”) is entered into by and between the Virginia Department of Health (“**VDH**”), pursuant to § 2.2-2012 of the *Code of Virginia* (“**Code**”) and on behalf of the Commonwealth of Virginia (“**Commonwealth**”), and GCOM Software LLC (“**Supplier**”), a corporation headquartered at 9175 Guilford Road, Suite 101, Columbia, MD 21046, to be effective as of September 30, 2023 (“**Effective Date**”).

1. PURPOSE AND SCOPE

This Contract sets forth the terms and conditions under which Supplier shall provide Crossroads Software Maintenance and Enhancement Services as described in:

EXHIBIT A – FUNCTIONAL REQUIREMENTS/PERFORMANCE WORK STATEMENT.

2. DEFINITIONS

Capitalized terms used in this Contract have the meaning as provided (i) where each term is used in the Contract unless the term is (ii) set forth in this “Definitions” section below which lists the capitalized terms used in this Contract and provides a definition for the term.

A. Agency

The Virginia Department of Health (VDH), of the Commonwealth of Virginia pursuant to the Code of Virginia Title 32.1 (§§ § 32.1 et seq.), or any successor agency.

B. Agent

Any third party independent agent of VDH.

C. Acceptance:

The written acknowledgement by the Agency of successful delivery and performance by the Supplier of its contractual commitments at the location(s) designated in the Contract, including completed and successful acceptance testing in conformance with the Requirements as determined by the Agency and set forth in the Contract.

D. Authorized User:

Any appropriately cleared individual as defined in the Crossroads User Group Charter (Exhibit F) with a requirement to access the system to complete necessary job functions or for performing maintenance or assisting with the system in a lawful purpose.

E. Claim

Any and all losses, damages, claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, assessments, fines, penalties (whether criminal or civil), judgments, settlements, expenses (including attorneys’ and accountants’ fees and disbursements), and costs. Collectively, “Claims”.

F. Code

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

G. Commercial Off-The-Shelf (“COTS”) Software

Software that is general in nature, not broad enterprise applications, which can be purchased and used immediately “as is,” without modification, in the same form in which it was sold in the commercial marketplace. Standard options are not considered modifications.

H. Commonwealth

The Commonwealth of Virginia.

I. Commonwealth Indemnified Parties

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

J. Component

Any part or service of the Solution, Software, or Deliverable delivered by Supplier under this Contract, including SOWs.

K. Computer Virus

Any malicious code, program, malware or other internal component (e.g., computer virus, computer worm, computer time bomb, or similar component), which could damage, destroy, alter or disrupt any computer program, firmware, or hardware or which could, in any manner, reveal, damage, destroy, alter or disrupt any data or other information accessed through or processed by such software in any manner.

L. Concurrent Users

The maximum number of concurrent active users utilizing the Software at a given point in time.

M. Confidential Information

Non-public proprietary or trade secret information of VDH and Supplier, whether the information is in written, graphic, machine readable or other tangible form, and which at the time of disclosure to any other Party is either (i) marked as being "Confidential" or "Proprietary"; (ii) Health Records;(iii) Personally Identifiable Information, including information about VDH's employees, contractors, and customers, or Sensitive Data, including PHI; or (iv) information that is protected by statute or other applicable law. "Confidential Information" also includes any (a) information to which the Supplier has access in VDH facilities or VDH's systems, (b) Work Product and information pertaining to the Work Product, (c) VDH data, VDH software, and systems access codes, and (d) information concerning VDH's and any other VDH's operations, plans, employees, contractors or third party suppliers

The term "Confidential Information" does not include information that is:

- i. in the public domain through no fault of the receiving Party or of any other person or entity that is similarly contractually or otherwise obligated;
- ii. obtained independently from a third-party without an obligation of confidentiality to the disclosing Party and without breach of this Contract;
- iii. developed independently by the receiving Party without reference to the Confidential Information of the other Party; or
- iv. required to be disclosed under The Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) or similar laws or pursuant to a court order.

N. Contract

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

O. Contractor

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

P. Deliverable

Software, Documentation, Components, plans, reports, data, Work Product, and any other materials, items or events, in each case described or itemized as something that is developed, prepared or created and delivered or required to be developed, prepared or created and delivered or made available to VDH as part of the Services, Maintenance Services, Licensed Services, application, Solution, product, Software, System Software, or Supplier product, , including the development or creation of Work Product.

Q. Documentation

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

R. Effective Date

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

S. Escrow Agent

The person or entity that holds and maintains all Software source code and related technical and user Documentation, along with a signed copy of the Escrow Agreement attached to this Contract as Exhibit E, in trust for the Parties as set forth in the “Escrow Agreement” section of this Contract below.

T. Federal Tax Information (“FTI”)

FTI consists of federal tax returns and return information (and information derived from it) that is in the possession or control of VDH, which is covered by the confidentiality protections of the Internal Revenue Code (“IRC”) and subject to the IRC § 6103(p)(4) safeguarding requirements including IRS oversight. FTI is categorized as “Sensitive” but “Unclassified” information and may contain personally identifiable information.

U. Maintenance Coverage Period (“MCP”)

The period of time during which Supplier is obligated to provide Maintenance Services for a unit of Software or product.

V. Maintenance Level

The defined parameters of Maintenance Services, including the times during which, and time-frames in which, Supplier shall respond to a request for Maintenance Services. The available Maintenance Levels are defined in Exhibit I to this Contract.

W. Maintenance Services

Those services, preventive and remedial, provided or performed by Supplier under the Contract, as defined in Exhibit A – Functional Requirements – Performance Work Statement (PWS) and Exhibit A-1 Functional Requirement, in order to ensure continued operation of the product, Hardware, or Software, Enhancements. Maintenance Services include support services. Maintenance Services for Software may include the development of Work Product, if so authorized in the Contract.

X. Party

Supplier, VDH

Y. Receipt

VDH has physically received or has unfettered access to any Deliverable at the correct “ship-to” location.

Z. Requirements

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

AA. Services

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

BB. Software

The programs and code provided by Supplier under the Contract as component(s) of any Deliverable or component of any Solution, and any subsequent modification of such programs and code. For COTS Software, “Software” means the programs and code, and any subsequent releases, provided by Supplier under this Contract as set forth in Exhibit B. If this Contract is for Software Maintenance, “Software” also includes the programs and code provided by Supplier under the Contract.

CC. Software Enhancements

The software modifications described as enhancements in Exhibit A – Functional Requirements –

Performance Work Statement (PWS) and Exhibit A-1 Functional Requirement.

DD. Software Publisher

The third-party licensor of the Software, other than the Supplier, provided by Supplier under this Contract.

EE. Solution

The Supplier's contractually committed technical approach for solving an information technology business objective and associated Requirements as defined and authorized by the scope of the Contract. Solution means all Supplier and Supplier's third-party providers' components making up the Solution, including but not limited to Software, product, configuration design, implementation, Supplier-developed interfaces, Services and Work Product.

FF. Subcontractor

Any entity to which Supplier (or other Subcontractor of any tier) has subcontracted for performance of, or delegated any of its responsibilities under the Contract, including an affiliate of the Supplier.

GG. Supplier

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

HH. Supplier Personnel

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

II. SWaM

Any entity certified by the Commonwealth's Department of Small Business and Supplier Diversity as a small, women-owned, minority-owned, or service disabled veteran-owned business, as defined in Code §§ 2.2-2000.1 and 2.2-4310, or a certified micro business as defined in Executive Order Number 35 (2019).

JJ. Term

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

KK. Transition Out Plan

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

LL. Transition Period

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

MM. Warranty Period

The period of time during which Supplier is obligated to provide maintenance for a unit of Software or product. The Supplier will maintain, support, and provide warranty services of the Software or product for the duration of the contract.

NN. Work Product

Inventions, combinations, machines, methods, formulae, techniques, processes, improvements, software enhancements, updates, designs, computer programs, strategies, specific computer-related know-how, data and original works of authorship discovered, created, or developed by Supplier, or jointly by Supplier and VDH in the performance of this Contract. Work Product does not include configuration of software, nor does it include anything developed by Supplier prior to, or outside of, this Contract.

3. TERM AND TERMINATION

A. Contract Term

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, will be effective and legally binding for a period of 36 months ("Term"). VDH, in its sole discretion, may extend this Contract for up to five (5) additional one (1) year periods after the expiration of the initial Term. VDH will issue a written notification to the Supplier stating

VDH's intention to exercise the extension period no less than 90 calendar days prior to the expiration of any current term.

B. Termination for Convenience

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

C. Termination for Cause

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

If VDH deems the Supplier to be in breach, VDH shall provide Supplier with notice of breach and allow Supplier 15 business days to cure the breach. If Supplier fails to cure the breach as required, VDH may immediately terminate this Contract in whole or in part. In addition, if Supplier is found by a court of competent jurisdiction to be in violation of or to have violated 31 U.S.C. § 1352, or if Supplier becomes a party excluded from Federal Procurement and Non-procurement Programs, VDH may immediately terminate this Contract, in whole or in part, for breach, and VDH shall provide written notice to Supplier of such termination. Supplier shall provide prompt written notice to VDH if Supplier is charged with violation of 31 U.S.C. § 1352, or if federal debarment proceedings are instituted against Supplier.

D. Termination for Non-Appropriation of Funds

All payment obligations from public bodies under this Contract are subject to the availability of legislative appropriations at the federal, state, or local level for this purpose. In the event of non-appropriation of funds, irrespective of the source of funds, for the items under this Contract, VDH may terminate this Contract, in whole or in part, for those goods or services for which funds have not been appropriated. Written notice will be provided to the Supplier as soon as possible after legislative action is completed.

E. Effect of Termination

Upon termination, neither the Commonwealth, nor VDH, will have any future liability except for Deliverables accepted by VDH or Services (including any applicable Licensed Services and Maintenance Services) rendered by Supplier and accepted by VDH prior to the termination date. In the event of a Termination for Breach, Supplier shall accept return of any Deliverable that was not accepted by the VDH, and Supplier shall refund any monies paid by VDH for the unaccepted Deliverable. Supplier will bear all costs of de-installation and return of Deliverables.

F. Termination by Supplier

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

G. Transition of Services

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

H. Contract Kick-Off Meeting

Within 30 calendar days of the notice to proceed, Supplier may be required to attend a contract orientation meeting, along with the VDH contract manager/administrator, VDH project manager(s) or authorized representative(s), and any other significant stakeholders who have part in the successful performance of this Contract. The purpose of this meeting will be to review all contractual obligations for both parties, all administrative and reporting requirements, and to discuss any other relationship, responsibility, communication and performance criteria set forth in the Contract.

I. Transition Out Plan

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

J. Contract Closeout

Prior to the Contract's expiration date, Supplier may be provided contract closeout documentation by VDH. If contract closeout documentation is provided, then Supplier shall complete, sign, and return to VDH Administrative Services Division any required documentation within 30 calendar days of receipt to ensure completion of closeout administration and to maintain a positive performance reputation with the Commonwealth. Any required closeout documentation not received within 30 calendar days of Supplier's receipt of the Commonwealth's request will be documented in the contract file as Supplier non-compliance. Supplier's non-compliance may affect any pending payments due to the Supplier, including final payment, until the documentation is returned to VDH.

4. SUPPLIER PERSONNEL**A. Selection and Management of Supplier Personnel**

Supplier shall ensure that all Supplier Personnel performing under this Contract are competent and knowledgeable of the contractual arrangements between VDH and Supplier. Supplier acknowledges that Supplier is the employer of all Supplier employees and shall have the sole responsibility to supervise, counsel, discipline, review, evaluate, set the pay rates of, provide (to the extent required by law) health care and other benefits for, and terminate the employment of Supplier employees. Supplier shall be solely responsible for the supervision and conduct of Supplier Personnel, including all acts, omissions, gross negligence, and willful misconduct of Supplier Personnel. Additionally, Supplier shall ensure that Supplier Personnel comply with VDH's site security, information security and personnel conduct rules, as well as applicable federal, state and local laws, including export regulations. VDH reserves the right to require the immediate removal from VDH's premises of any Supplier Personnel whom VDH believes has failed to comply with the above or whose conduct or behavior is unacceptable or unprofessional or results in a security or safety breach.

B. Key Personnel

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

C. Subcontractors

Supplier shall not use Subcontractors to perform its contractual obligations pursuant to the Contract unless specifically authorized in writing to do so by VDH. If this Contract is supported in whole or in part with federal funds, Supplier may not subcontract to any Subcontractor that is a party excluded from Federal Procurement and Non-procurement Programs. In no event may Supplier subcontract to any Subcontractor that is debarred by the Commonwealth or that owes back taxes to the Commonwealth and has not made arrangements with the Commonwealth for payment of such back taxes.

If Supplier subcontracts the provision of any performance obligation under this Contract to any other party, Supplier shall (i) act as prime contractor and will be the sole point of contact with regard to all obligations under this Contract; and (ii) represent and warrant that any authorized Subcontractors shall perform in accordance with the warranties set forth in this Contract.

5. NEW TECHNOLOGY

A. Access to New Technology

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

B. New Service Offerings Not Available from Supplier

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

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

6. GENERAL WARRANTY

THE OBLIGATIONS OF SUPPLIER UNDER THIS GENERAL WARRANTY SECTION ARE MATERIAL. EXCEPT AS PROVIDED IN ARTICLES 6. GENERAL WARRANTY AND 11. WARRANTY AND MAINTENANCE SERVICES THIS CONTRACT AND ARTICLE 15. CLOUD SERVICES WARRANTY OF EXHIBIT K CLOUD SERVICES ADDITIONAL CONTRACT TERMS AND CONDITIONS, SUPPLIER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY OTHER PARTICULAR PURPOSE.

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

A. Ownership

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

B. Coverage Period

Supplier warrants that any Deliverables provided by Supplier under this Contract will meet or exceed the Requirements. Supplier shall correct, at no additional cost to VDH, all errors identified during the warranty period that result in supplier's failure to meet the Requirement, or its contractual obligations.

C. Component Warranty

For any Component, the applicable warranty period shall be the period from written acceptance of the Component until Contract termination.

D. Interoperability Warranty

Supplier warrants that each Component, regardless of the origin of the Component, delivered under this Contract shall be interoperable with other Components so as to meet or exceed the performance specified in the Requirements.

E. Performance Warranty

With respect to Supplier's performance under this Contract:

- i. Supplier shall perform all contractual obligations with the care, skill and diligence, consistent with or above applicable professional standards currently recognized in Supplier's profession, and Supplier shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all plans, information, specifications, Deliverables, and Services furnished under this Contract; and
- ii. Supplier shall ensure that any contractually-obligated Services or Deliverables, or both, meet or exceed the Requirements and that any Product will function in conformance with the Requirements.

F. Documentation and Deliverables

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

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- iii. All Deliverables provided or delivered pursuant to this Contract are at the current release level unless VDH specifies an older version.
- iv. No Maintenance Services, engineering change, or revision made to any Supplier-provided Deliverables will
- v. (a) degrade the performance of any Deliverable or its components to a level below that defined in the Requirements or the product manufacturer's or Software Publisher's published specifications, as applicable; (b) cause any other warranty to be breached; or (c) require VDH to acquire additional hardware equipment or software.

G. Malicious Code

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

Notwithstanding any rights granted under this Contract or at law, Supplier waives, under any and all circumstances, any right it has or may have in the future to exercise its license termination rights by electronic means. Supplier agrees that VDH may pursue all remedies provided under law in the event of a breach or threatened breach of this section, including injunctive or other equitable relief.

H. Open Source

Supplier will notify VDH if any Deliverables, as obligated and provided by Supplier, contain any Open Source code and identify the specific Open Source License that applies to any embedded code dependent on Open Source code, provided by Supplier under this Contract.

I. Supplier's Viability

Supplier has the financial capacity to perform and continue to perform its obligations under this Contract. Supplier has no constructive or actual knowledge of a potential legal proceeding being brought against Supplier that could materially adversely affect the performance of this Contract. Further, Supplier is not prohibited by any contract, or order by any court of competent jurisdiction from entering into this Contract.

J. Supplier's Past Experience

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

7. RESERVED**8. RIGHTS TO WORK PRODUCT**

Any license to pre-existing work will be held, and all rights in, title to, and ownership of Work Product will vest, pursuant to the terms of the "Licensing Within the Commonwealth" section of this Contract below.

A. Work Product

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

B. Ownership

All Work Product discovered, created, or developed under this Contract is and will remain the sole property of the Commonwealth and its assigns, or VDH and its assigns, regardless of whether the Services are considered "works made for hire" or "hired to invent". Except as specifically set forth in writing and signed by both VDH and Supplier, Supplier agrees that the Commonwealth or VDH will have all rights with respect to any Work Product discovered, created or developed under this Contract, without regard to the origin of the Work Product.

Supplier irrevocably transfers, grants, conveys, assigns and relinquishes exclusively to the Commonwealth or VDH any and all right, title and interest it now has or may hereafter acquire in and to the Work Product under patent, copyright, trade secret and trademark law in perpetuity, or for the longest period otherwise permitted by law. If any moral rights are created, Supplier expressly waives all moral rights created in the Work Product. Supplier shall assist the Commonwealth or VDH in every reasonable way to obtain and, from time to time, enforce patents, copyrights, trade secrets and other rights and protection relating to the Work Product.

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

Supplier agrees that the provisions of this section will survive any termination of this Contract by VDH. Supplier also agrees that in the event of a breach of this Contract by VDH, Supplier's remedy will not include any right to rescind, revoke, or otherwise invalidate the provisions of this section.

C. Pre-existing Rights

If, and to the extent that, any pre-existing rights are embodied or reflected in the Work Product, Supplier grants to the Commonwealth or VDH the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such pre-existing rights and any derivative works thereof; and (ii) authorize others to do any or all of the foregoing. Supplier will retain all ownership rights in any pre-existing works.

D. Return of Materials

Upon termination of this Contract, Supplier shall immediately return to VDH all copies, in whatever form, of any and all Confidential Information, Work Product and other properties provided by VDH that are in Supplier's possession, custody, or control.

9. RESERVED**10. DELIVERY AND INSTALLATION****A. Scheduling****Scheduling of Software Maintenance**

Supplier shall complete performance of the Maintenance Services according to the delivery dates set forth in Exhibit A or as mutually agreed by Supplier and VDH.

Installation of Software Enhancements

Software Enhancements will be deemed to be installed when all Acceptance criteria as specified in the Contract have been met. Upon Supplier completion of the Software Enhancements and successful Acceptance testing, Agency shall provide to Supplier written notice of Acceptance.

B. Deployment of Solution – Not Applicable**C. Documentation of Software Configuration**

If the Solution includes configuration of Software by Supplier, Supplier shall provide Documentation containing a description of the configuration to VDH. The Documentation must be of sufficient detail so that any appropriately trained employee or Agent of VDH may reconstruct the configuration of the Software.

11. ACCEPTANCE AND CURE PERIOD**Services Acceptance Criteria**

Service(s) will be deemed accepted when Agency determines that the Service(s) meet(s) the Requirements set forth in the applicable order or SOW. Supplier shall ensure any individual Deliverable functions properly with any other Deliverables provided pursuant to the order or SOW. In the event that a previously Accepted Deliverable requires further modification in order to work properly with any other Deliverable, Supplier shall be responsible for all costs associated with the modification.

Agency shall commence Acceptance testing within ten (10) calendar days after Receipt of the Service, or within such other period as set forth in the applicable order or SOW. Acceptance testing will last no longer than thirty (30) calendar days, unless otherwise agreed to in writing between Agency and Supplier, for each Deliverable, or for the first instance of each Service type set forth in Exhibit B. Supplier shall provide Agency any assistance and advice as Agency may reasonably require, at no additional cost, during Acceptance testing. Agency shall provide Supplier written notice of Acceptance upon completion of installation and successful Acceptance testing. In the event that Agency fails to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) business days following the Acceptance testing period, the Service will be deemed Accepted.

Services Cure Period

Supplier shall correct any non-conformities identified during Acceptance testing and re-submit the non-conforming Service for re-testing within fifteen (15) calendar days of Supplier's receipt of written notice of non-conformance, unless otherwise agreed to between Agency and Supplier in the applicable order or SOW. Should Supplier fail to cure the non-conformity or deliver a Service which meets the Requirements, Agency may, in its sole discretion:

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

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

12. WARRANTY AND MAINTENANCE SERVICES

At any time during the Warranty Period or MCP, as applicable, Supplier shall provide the following warranty or maintenance services (including unlimited telephonic support and all necessary travel and labor) to maintain the Solution in accordance with the Requirements.

A. Known Defects

Supplier shall promptly notify VDH in writing of any defects or malfunctions in the Solution or Documentation of which it learns from any source. Defects and incidents will be addressed in accordance with Exhibit I Service Level Requirements (SLR)

B. New Releases

No later than the first day of general release, Supplier shall provide to VDH copies of the Software and Documentation revised to reflect any enhancements, including all new releases, upgrades, and access modes, to the Software made by Supplier, including, without limitation, modifications to the Software which can increase the speed, efficiency or base of operation of the Software or add additional capabilities to or otherwise improve the functionality of the Software.

C. Coverage

Supplier shall provide all reasonably necessary telephone or written consultation requested by VDH in connection with use, problems, and operation of the Solution. Supplier is obligated to provide coverage under this provision on a 24 hours per day, seven days per week basis.

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D. Service Levels

Supplier shall respond to problems with the Solution identified by VDH in accordance with Exhibit I – Supplier Service Level Requirements

E. Software Evolution

In the event that Supplier or Software Publisher merge or splinter the Software previously provided to VDH, Supplier shall not charge VDH additional support fees in order to receive enhancements, releases, upgrades, or support for the Software.

If Supplier or Software Publisher reduces or replaces functionality contained in a licensed Software product and provides the same or substantially similar functionality as or within a separate or renamed Software product, then the Commonwealth or VDH will be entitled to license such Software product at no additional license or maintenance fee, and subject to the terms and conditions in this Contract.

If Supplier or Software Publisher releases an option, future Software product, or other release that has substantially the same functionality as the Software products provided under this Contract, and the Software Publisher, or Supplier, or both, ceases to provide Maintenance Services for the older Software product, then Supplier shall offer the Commonwealth or VDH the option to exchange licenses for such replacement Software product or function at no additional charge.

F. Escalation Procedures

The escalation process is based on the premise that each Party will strive to resolve a dispute at the lowest level empowered to make a decision with escalation to a higher tier if there is a situation beyond their level of delegated authority or the Party's representatives at that level reach an impasse. Escalation will continue until an issue is resolved or it has been escalated to the top of the governance structure. The first tier is the respective project managers. The second tier is the respective project directors. The third tier is the respective project executives. The fourth tier is the respective executive sponsor or, for Contractor, a C-level officer.

13. FEES, ORDERING, AND PAYMENT PROCEDURE**A. Fees and Charges**

In consideration for the Supplier's performance obligations under this Contract, VDH shall pay Supplier the fee(s) owed pursuant to the schedule of fees and charges as set forth on Exhibit B attached to this Contract. Supplier will only be entitled to those fees owed for Supplier's performance obligations and any additional Products and Services provided to VDH in accordance with the scope of this Contract and the Requirements, as authorized by Exhibit A, of the Contract. The fees, and any associated discounts, will be applicable throughout the Term of this Contract unless modified pursuant to the terms and conditions below. In the event the fees or discounts apply for any period less than the entire Term, Supplier agrees that it will not increase the fees during the first twelve (12) month period following the Effective Date, and will not increase the fees more than once in any subsequent twelve (12) month period thereafter. No increase in fee amounts will exceed the lesser of three percent (3%) or the annual increase in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, Not Seasonally Adjusted, as published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/cpi/home.htm>) for the period ending 60 to 90 days prior to the effective date of the increase compared with the same index one (1) year prior. Supplier must submit any change in price in writing to VDH in accordance with the above and will not become effective for 60 calendar days thereafter. Supplier agrees to offer price reductions to ensure compliance with the "Competitive Pricing" section of this Contract below.

B. Reproduction Rights for Supplier-Provided Software

At VDH's request, Supplier shall provide VDH with a reproducible, portable data storage device (e.g. CD-ROM or USB flash drive) of Software. VDH will be responsible for making copies and distributing the Software and Updates as required.

C. Ordering

Notwithstanding VDH's rights to license or purchase Supplier's products or services under this Contract, Supplier shall accept any order placed by VDH through the Commonwealth's electronic procurement website portal, eVA (<http://www.eva.virginia.gov/>).

Supplier shall not accept any Purchase Order from VDH if the Purchase Order is to be funded, in whole or in part, by federal funds and if, at the time the Purchase Order is placed, Supplier is not eligible to be the recipient of federal funds as may be noted on any of the Lists of Parties Excluded

from Federal Procurement and Non-procurement Programs.

D. Performance Work Statement (PWS)

The Performance Work Statement (PWS), in the format provided for in Exhibit A and Exhibit A-1 attached to this Contract, outlines the services pursuant to this Contract. Supplier shall perform any and all contractual obligations at the times and locations set forth in the applicable PWS and at the rates set forth in Exhibit B to this Contract.

Any change to the PWS must be described in a written change request. Change requests will be subject to written approval of the other Party before it becomes part of this Contract.

Invoice Procedures.

Supplier shall remit each invoice to the "bill-to" address provided with the order promptly after all Supplier's performance obligations have been accepted and in accordance with the milestone payment schedule in the Contract or as otherwise described in this Contract. Payment for any support services, as authorized in the Contract, will be as stated in this Contract. Supplier shall invoice for each Transition In Period (Month) following the end of the month through the duration of the Transition In Period (Three [3] Months). Supplier shall invoice for Software Maintenance and Enhancement Services monthly based on a proration of the total annual cost. Supplier shall invoice for Estimated Enhancements monthly based on the number of hours utilized in the prior month. Supplier shall invoice for Service Orders monthly based on actual hours utilized in the prior month, in accordance with the Change Control Process. Supplier shall invoice for Hosted Environments monthly based on a proration of the total cost. Supplier will invoice each member of the Crossroads User Group in accordance with the Crossroads User Group Charter. For the avoidance of doubt, VDH is not responsible for paying costs that are the responsibility of another member of the Crossroads User Group. No invoice may include any costs other than those identified in this Contract, and those costs must be in accordance with the schedule of fees listed on Exhibit B. Without limiting the foregoing, all shipping costs are the Supplier's responsibility except to the extent shipping charges are identified in Exhibit B and noted in this Contract. Supplier shall issue invoices that identify, at a minimum:

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

Any terms included on Supplier's invoice will have no force or effect and will in no way bind VDH.

E. Purchase Payment Terms

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

F. Reimbursement of Expenses

VDH shall pay, or reimburse Supplier, for all reasonable and actual travel-related expenses for greater than 30 miles from portal to portal incurred by Supplier during the relevant period. VDH will only be liable to pay for Supplier's travel-related expenses, including transportation, meals, lodging and incidental expenses that have been authorized by VDH in advance. The travel-related expenses will be reimbursable at the then-current per diem amounts as published by the Virginia Department of Accounts (<http://www.doa.virginia.gov/>).

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

G. Disputed Charges

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

14. REPORTING

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

Small Business Procurement and Subcontracting Spend

This report must be submitted in accordance with the instructions and further detailed requirements, and on the templates set forth below. Supplier's failure to comply with all reporting, payment, and other requirements in this section may be deemed by VDH, in its sole discretion, to be a breach of the Contract.

A. Small Business Procurement and Subcontracting Spend

Supplier shall provide to VDH a report of monthly subcontracting spend data. This data must include Supplier's total spend to all Subcontractors who provide direct performance for obligations under this Contract. Supplier's monthly subcontracting spend data must be submitted at: SWAM@VDH.Virginia.gov.

In addition, every six (6) months following the Effective Date, Supplier shall submit to VDH a "SWaM Subcontracting Certification of Compliance" ("SSCC") certifying that Supplier has fully complied with the Contract's Supplier Procurement and Subcontracting Plan ("Plan"). A copy of Supplier's Plan is attached to this Contract as Exhibit H, and is incorporated by reference. The SSCC must include a written explanation of any variances of greater than 20% between the Plan and the actual subcontractor spend by Supplier. Supplier's SSCC will be maintained by VDH in the Supplier's procurement file. Supplier must submit the SSCC to the following address: SWAM@VDH.virginia.gov. In the event that Supplier fails to comply with its contractually obligated Plan spend or fails to report its contractually obligated Plan spend, VDH may, at its sole discretion, prohibit or delay any renewals or extensions of the Contract, withhold any final payments due, or both. Supplier's failure to comply will be considered in the prospective award of any future contracts with Supplier.

15. SUPPLIER PERFORMANCE METRICS

VDH has developed a set of supplier service level requirements ("SLR") relating to Supplier's performance under this Contract and which are attached hereto and incorporated by reference as Exhibit I. Supplier agrees to be bound by and perform its obligations under this Contract pursuant to the SLR. The remedies for Supplier's failure to meet the SLR are set forth in Exhibit I. The cumulative SLR remedies for any month shall not exceed 20% of Supplier's invoice for the applicable month. While SLR remedies may decrease Supplier's invoice amount, no remedy will have the effect of denying, preventing, or delaying payment that was otherwise due under the Contract.

Supplier and VDH agree to meet within 30 calendar days of the Effective Date of this Contract to set forth the methodology and designated personnel of each Party to provide, collect, monitor, and report the SLA performance data and mutually agreed-to incentives and remedies. Supplier agrees to provide to VDH a report of its performance against the SLAs as stated in Exhibit I throughout the Term. Supplier's report must include a comparison of its SLA performance against the agreed-to targets and, in the event of any shortfall by Supplier, proposed remediation measures. Any instances of Supplier non-compliance will be recorded in Supplier's Contract file and shared with Contract stakeholders. Supplier further agrees that any degradation or failure of Supplier's performance obligations may result in failure to renew the

Contract, termination for convenience of the Contract or termination for breach of the Contract. VDH will have all rights and remedies available at law.

16. STATUS MEETINGS

Supplier will be prepared to conduct monthly stewardship meetings with VDH to provide a broad review of all services, projects and ongoing operations. Supplier should also be prepared to conduct semi-annual meetings/presentations to discuss new products and services and their potential benefit to VDH.

17. STEERING COMMITTEE

In order to facilitate mutually beneficial contractual relationships with suppliers, VDH has procedures for establishing a steering committee ("Steering Committee"), consisting of senior management personnel, including personnel involved in the contractual relationship, from VDH and Supplier.

Roles of the Steering Committee include but are not be limited to (a) identifying potential issues which may arise during the performance of a contract; (b) discussing and assigning roles and responsibilities; (c) establishing methods for quickly resolving potential disputes; (d) setting rules for communication and decision making; (e) monitoring and measuring the business relationship between the parties; and (f) acting as a final decision board for escalated problems.

A meeting of the Steering Committee is intended to be a forum for brainstorming and sharing ideas, emphasizing respect, cooperation, and access, with the end goal of developing relationships to avoid conflict. A facilitator may, but is not required to, conduct a meeting of the Steering Committee.

A Steering Committee for this Contract will be formed at VDH's option. Meetings may be held at any time during the Contract term, should VDH, at its sole discretion, determine that a meeting(s) would be beneficial to the contractual relationship, and Supplier agrees to participate in any scheduled meeting(s). In addition, Supplier may at any time submit a written request to VDH for a meeting of the Steering Committee, which VDH will not unreasonably deny.

Supplier will ensure the availability of the appropriate personnel to meet with the VDH contract management team. Additional Steering Committee meetings involving representatives from VDH, the Supplier, may be required prior to or during performance on any specific SOW issued pursuant to this Contract.

18. POLICIES AND PROCEDURES GUIDE

Within 30 calendar days of the Effective Date of the Contract, Supplier will provide VDH with a policy and procedures guide that describes how the Supplier and VDH will work together and how performance, including Deliverables and Services, is to be measured. The guide will provide process diagram details, working activities, and interface points with VDH and Supplier deliverables.

Updated versions of the guide will be provided by Supplier to VDH when Supplier and VDH agree that a change is required, but at a minimum, every six (6) months during the Term, including any extensions, of the Contract.

19. TRAINING AND DOCUMENTATION

A. Training

In addition to any online tutorial training Supplier may make available, Supplier's fee, unless expressly excluded, includes all costs for any and all virtual/remote training as agreed upon for the training of VDH. In order to allow VDH the full benefit of the applicable Deliverable, the training will cover the use and operation of the Deliverable provided to VDH, including instruction in any necessary conversion, manipulation, or movement of VDH's data. Supplier shall provide personnel sufficiently experienced and qualified to conduct such training at a time and location mutually agreeable to Supplier and VDH. Available additional and optional training, and applicable pricing and discounts, are described in Exhibit B.

B. Documentation

Supplier shall deliver to VDH complete copies of any Documentation applicable to the Deliverable(s) provided to VDH, in a quantity and media format as agreed upon by the Parties. Should Supplier revise or replace the Documentation, or should Documentation be modified to reflect Updates, Supplier shall deliver to VDH copies of the updated or replacement Documentation, in the same quantity and media format as originally requested by VDH, or as agreed upon between the Parties. VDH will have the right, as part of any license grant, to make as many additional copies of the

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Documentation, in whole or in part, for its own use as required. This Documentation must include, but is not limited to, overview descriptions of all major functions, detailed step-by-step installation and operating procedures for each screen and activity, and technical reference manuals. Such Documentation must be revised to reflect any modifications, fixes or updates made by Supplier. VDH, at its own discretion, will have the right, as part of the license granted by Supplier, to modify or completely customize all or part of the Documentation in support of the authorized use of the licensed Application or Software. VDH may also duplicate such Documentation and include it in VDH's User's document or platform. VDH shall continue to include Supplier's copyright notice.

20. VDH SELF-SUFFICIENCY

At VDH's request, and pursuant to an order or SOW for Supplier's Services issued under this Contract, Supplier shall provide all assistance reasonably required by VDH to develop VDH's self-sufficiency in operating and managing any combination of the Solution, Software, products, or Services that Supplier provided to VDH under the Contract. During or after the Transition Period, VDH may, at its sole discretion, elect to order or continue Maintenance Services from Supplier, if authorized under the scope of the Contract, for any of the Software or hardware product, Components, or Solution Components delivered to VDH by Supplier.

21. COMPETITIVE PRICING

Supplier warrants that each of the prices, charges, economic or product terms, or warranties granted under this Contract are fair, reasonable, and commensurate with the price, charge, economic or product term or warranty being offered by Supplier to other government customers that purchase substantially similar services or products, at similar volumes, and under substantially similar terms and conditions. Supplier shall notify VDH of any new services or products that become generally available to all government customers during the Term of this Contract. New products and services are subject to the commercial terms associated with those products and services and must be formally added to this Contract before they can be purchased. Supplier shall also offer VDH commercially available national government products and services promotions and rates available at the time of purchase under the terms of those promotions.

22. CONFIDENTIALITY**A. Treatment and Protection**

Each Party shall:

- i. hold in strict confidence all Confidential Information of any other Party;
- ii. use the Confidential Information solely to perform or to exercise its rights under this Contract; and
- iii. not transfer, display, convey or otherwise disclose or make available all or any part of the other Party's Confidential Information to any third-party.

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

B. Return or Destruction

Upon the termination or expiration of this Contract, or upon the earlier request of VDH, Supplier shall, at its own expense,

- i. promptly return all tangible Confidential Information (and all copies thereof except the record required by law) to VDH; or
- ii. upon written request from VDH, destroy any Confidential Information in Supplier's possession or control, and provide VDH with written certification of the destruction.

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

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

C. Confidentiality Statement

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

D. Freedom of Information Act Acknowledgement

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

23. INDEMNIFICATION**A. Indemnification Generally**

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

- i. any negligent act, negligent omission, intentional or willful misconduct or recklessness of the Supplier or any Supplier Personnel in the performance of this Contract;
- ii. a breach of any representation, warranty, covenant, or obligation of Supplier contained in this Contract;
- iii. any defect in the Supplier-provided products or services; or
- iv. any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Supplier-provided products or services.
- v. any Claims by any Subcontractor resulting from Supplier's failure to pay such Subcontractor.

B. Defense of Claims

Supplier will be solely responsible for all costs and expenses associated with the defense of all third-party Claims against Commonwealth Indemnified Parties that are within the indemnification obligation defined in section 23.A. above.

C. Duty to Replace or Reimburse

In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Supplier-provided products or services, or Supplier's performance, Supplier shall, at its expense and option, either (a) procure the right to continue use of such infringing products or services, or any components thereof; or (b) replace or modify the infringing products or services, or any components thereof, with non-infringing products or services satisfactory to VDH.

In the event VDH cannot use the affected Deliverable, product, Licensed Services, or Services, including any Components, then Supplier shall reimburse VDH for the reasonable costs incurred by VDH in obtaining an alternative product or service.

D. Supplier Dispute of Obligation to Indemnify

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

24. LIABILITY**A. Supplier Liability**

Except for liability arising from any combination of:

- i. the intentional or willful misconduct, fraud, or recklessness of the Supplier or of any

employee of the Supplier; or

ii. Claims for bodily injury, including death, and damage to real property or tangible property resulting from the negligence of the Supplier or any employee of the Supplier

Supplier's indemnification obligations and liability shall not exceed, in aggregate, twice the value of the Contract.

B. Limitation of Liability

Subject to the provisions of 24.A. Supplier Liability, Supplier will be liable for damages caused by its employees, agents, or subcontractors. Except for liability arising out of a Party's intentional or willful misconduct, fraud, or recklessness, neither Party will be liable to the other Party for any indirect, incidental, consequential, or punitive damages, including (without limitation) loss of profit, income, or savings, even if advised of the possibility of these damages.

25. INSURANCE

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

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

26. SECURITY COMPLIANCE

Supplier shall comply with all provisions of the then-current Commonwealth security procedures, published by VITA and which may be found at: [VITA POLICIES, STANDARDS & GUIDELINES](#) any successor URL(s) as are pertinent to Supplier's operation. Further, Supplier shall comply with all applicable provisions of VDH's then-current security procedures as are pertinent to Supplier's operation and that have been provided to Supplier by VDH. Supplier shall also comply with all applicable federal, state, and local laws and regulations.

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

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

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

VDH reserves the right to review Supplier's information security program prior to the commencement of Licensed Services and at least once annually during the Term of this Contract. During the performance of the Licensed Services, and on an annual basis, VDH will be entitled, at its own expense, to perform, or to have performed, an on-site audit of Supplier's information security program. In lieu of an on-site audit, upon request by VDH, Supplier shall implement any reasonably required safeguards as identified by any program audit.

27. IMPORT/EXPORT

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

28. BANKRUPTCY

If Supplier becomes insolvent, takes any step leading to its cessation as a going concern, fails to pay its debts as they become due, or ceases business operations continuously for longer than 15 business days, then VDH may immediately terminate this Contract on notice to Supplier unless Supplier immediately

gives VDH adequate assurance of the future performance of this Contract. If this Contract has not been otherwise terminated and bankruptcy proceedings are commenced with respect to Supplier, then VDH may suspend all further performance of this Contract until Supplier assumes this Contract and provides adequate assurance of its performance of Supplier's contractual obligations or rejects this Contract pursuant to Section 365 of the Bankruptcy Code or any similar or successor provision, it being agreed by VDH and Supplier that this is an executory contract. Any suspension of further performance by VDH pending Supplier's assumption or rejection will not be a breach of this Contract, and will not affect the rights of VDH to pursue or enforce any of its rights under this Contract or otherwise.

29. GENERAL PROVISIONS

A. Relationship Between VDH and Supplier

Supplier has no authority to contract for, bind or commit to any agreement of any kind, or to assume any liabilities of any nature in the name of or on behalf of VDH. Under no circumstances will Supplier, or any Supplier Personnel, hold itself out as or be considered an agent or an employee of VDH and neither VDH will have any duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or any Supplier Personnel. Supplier represents and warrants that it is an independent contractor for purposes of federal, state, and local employment taxes, and agrees that VDH is not responsible to collect or withhold for Supplier any federal, state, or local employment taxes, including, but not limited to, income tax withholding and social security contributions. Supplier shall pay or withhold any and all taxes, interest or penalties (including, but not limited to, any federal, state, or local withholding or employment taxes, and any penalties related to health care or employee benefits laws) that are imposed, assessed, or levied as a result of this Contract or Services performed pursuant to this Contract. Supplier shall reimburse VDH in the event that any taxes, interest or penalties are assessed against and paid by VDH as a result of this Contract.

B. Licensing Within the Commonwealth

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

- i. the Commonwealth of Virginia, as VDH is an agency as defined by Code § 2.2-2006

C. Incorporated Contractual Provisions

In addition to the terms, conditions, and obligations of this Contract, Supplier agrees to the "[Mandatory Contract Terms](#)" which consist of:

- "[Core Contractual Terms](#)";
- "[RequiredD eVA Terms and Conditions](#)"; and
- "[Mandatory Internal Revenue Service \(IRS\) Publication 1075 \(required for FTI data only\)](#)"

Each of these Mandatory Contract Terms are incorporated into this Contract by reference. Terms are located at <https://www.vita.virginia.gov/procurement/contracts/mandatory-contract-terms/>.

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

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

D. Compliance with the Federal Lobbying Act

Supplier's signed certification of compliance with 31 U.S.C. § 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder is incorporated as Exhibit G to this Contract.

E. Ethics in Public Contracting

By signing this Contract, Supplier warrants that its assent to this Contract is made without collusion

or fraud, and that Supplier has not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with their proposal or the terms of this Contract. Further, Supplier warrants that it has not conferred any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, on any public employee having official responsibility for this procurement transaction, unless consideration of substantially equal or greater value was exchanged. In addition, Supplier warrants that it will notify VDH if it becomes aware of a potential conflict of interest in the future.

F. Governing Law

This Contract is governed by and will be construed in accordance with the laws of the Commonwealth of Virginia without regard to that body of law controlling choice of law. Any and all litigation relating to this Contract must be brought in the circuit courts of the Commonwealth of Virginia. The English language version of this Contract prevails when interpreting this Contract. The United Nations Convention on Contracts for the International Sale of Goods and all other laws and international treaties or conventions relating to the sale of goods are expressly disclaimed. The Uniform Computer Information Transactions Act applies to this Contract only to the extent required by Code § 59.1-501.15.

G. Assignment

This Contract is binding upon and will inure to the benefit of the permitted successors and assigns of VDH and Supplier. Supplier may not assign, subcontract, delegate or otherwise convey this Contract or any of its rights and obligations under this Contract, to any entity without the prior written consent of VDH, and any attempted assignment or subcontracting without consent will be void. VDH may assign this Contract to any entity, so long as the assignee agrees in writing to be bound by all the terms and conditions of this Contract.

If any law limits the right of VDH or Supplier to prohibit assignment or nonconsensual assignments, the effective date of the assignment will be 30 calendar days after the Supplier gives VDH prompt written notice of the assignment, signed by authorized representatives of both the Supplier and the assignee. Any payments made prior to receipt of such notification will not be covered by this assignment.

H. Severability

Invalidity of any term of this Contract, in whole or in part, will not affect the validity of any other term. VDH and Supplier further agree that in the event such provision is an essential part of this Contract, they shall immediately begin negotiations for a suitable replacement provision.

I. Survival

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

J. Force Majeure

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

K. No Waiver

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

L. Remedies

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

M. Right to Audit

VDH reserves the right to audit those Supplier records that relate to this Contract or any SOW or orders issued here-under. VDH's auditing rights are limited as follows:

- i. three (3) years from termination of the Contract;

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- ii. at VDH's expense;
- iii. no more than once per every twelve (12) month period;
- iv. performed at Supplier's premises, during normal business hours at mutually agreed upon times; and
- v. access to Supplier cost information is excluded.

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

N. Taxes

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

O. Currency

All prices, costs, or fees in this Contract and exhibits, schedules, orders, or SOWs are in United States dollars.

P. Advertising and Use of Proprietary Marks

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

Q. Notices

Any notice required or permitted to be given under this Contract must be in writing and will be deemed to have been sufficiently given if delivered in person, or if deposited in the U.S. mails, postage prepaid, for mailing by registered, certified mail, or overnight courier service addressed:

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

Pursuant to Title 13.1 of the Code, VDH or Supplier may change its address for notice purposes by giving the other Party notice of such change in accordance with this Section.

Administrative contract renewals, modifications or non-claim related notices are excluded from the above requirement. Such written, or signed, or both, contract administration actions may be processed by the assigned VDH and Supplier points of contact for this Contract and may be given in person, via U.S. mail, courier service or electronically.

R. Contract Administration

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

S. Captions

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

T. Entire Contract

The following exhibits, including all subparts thereof, are attached to this Contract and are made a part of this Contract for all purposes:

- Exhibit A – Functional Requirements – Performance Work Statement (PWS)
and the Supplier's proposal response as provided in:
 - Exhibit A-1- Functional Requirement (Excel Format)
 - Exhibit A-2 – Supplier's entire proposal as negotiated
 - Exhibit B – Pricing

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Exhibit B-1 – Pricing Methodology.

Exhibit C – Reserved

Exhibit D – Crossroads User Group Change Control Process

Exhibit F – Crossroads User Group Charter

Exhibit G – Certification Regarding Lobbying (check VITA website under Forms)

Exhibit H – Supplier Procurement and Subcontracting Plan

Exhibit I – Supplier Service Level Requirements (SLR)

Exhibit J – Glossary of Terms and Definitions

Exhibit K - Additional Cloud Services Terms and Conditions

This Contract, its exhibits, and any prior non-disclosure agreement constitute the entire agreement between VDH and Supplier and supersede any and all previous representations, understandings, discussions or agreements between VDH and Supplier as to the subject matter of this Contract. Any and all terms and conditions contained in, incorporated into, or referenced by the Supplier's proposal are deemed invalid. The provisions of the Virginia Department of General Services, Division of Purchases and Supply Vendor's Manual will not apply to this Contract or any order issued pursuant to the Contract. This Contract may only be amended by an instrument in writing signed by VDH and Supplier.

U. Order of Precedence

In the event of a conflict, the following order of precedence shall apply: this Contract document, Exhibit K - Additional Cloud Services Terms and Conditions, Exhibit I - Service Level Requirements (SLR), Exhibit A, Exhibit A-1, Exhibit A-2, Exhibit B, Other Exhibits incorporated by reference, then any project specific order. In the event of a conflict or inconsistency between the negotiated terms of this Contract and any provision incorporated by reference into the Contract (e.g., a section of a License Agreement), the negotiated terms of this Contract will take precedence. For purposes of this section, a "conflict" exists with respect to a subject that has been comprehensively addressed in the Contract when supplementary terms contained in a provision incorporated by reference would alter the rights and obligations of the Parties set forth in the Contract.

V. Counterparts and Electronic Signatures

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

W. Opportunity to Review

VDH and Supplier each acknowledge that it has had the opportunity to review this Contract and to obtain appropriate legal review if it so chose.

X. Equal Employment Opportunity

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of federally assisted construction contract in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60- 1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." (2 CFR 200, Subpart F, Appendix II)

Y. Clean Air and Federal Water Pollution Control Act

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal

awarding agency and the Regional Office of the Environmental Protection Agency (EPA). (2 CFR 200, Subpart F, Appendix II)

AA. Anti-Lobbying Act

Recipients of Federal contracts, grants, and loans are prohibited from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. As required by Section 1352, Title 31 of the U.S. Code and implemented at 2 CFR 200, Subpart F, Appendix II, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 31 U.S.C. 1352, the applicant certifies that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement;
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions;
- c. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly

BB. Americans with Disabilities Act

This Act (28 CFR Part 35, Title II, Subtitle A) prohibits discrimination on the basis of disability in all services, programs, and activities provided to the public and State and local governments, except public transportation services.

CC. Drug-Free Workplace Statement

In addition to the Drug-Free Workplace requirements outlined in the Core Contractual Terms incorporated by reference, the Federal government implemented 41 U.S. Code § 8103, Drug-free workplace requirements for Federal grant recipients in an attempt to address the problems of drug abuse on the job. It is a fact that employees who use drugs have less productivity, a lower quality of work, and a higher absenteeism, and are more likely to misappropriate funds or services. From this perspective, the drug abuser may endanger other employees, the public at large, or themselves. Damage to property, whether owned by this entity or not, could result from drug abuse on the job. All these actions might undermine public confidence in the services this entity provides.

Therefore, in order to remain a responsible source for government contracts, the following guidelines have been adopted:

1. The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the work place.
2. Violators may be terminated or requested to seek counseling from an approved rehabilitation service.
3. Employees must notify their employer of any conviction of a criminal drug statute no later than five days after such conviction.
4. Contractors of federal agencies are required to certify that they will provide drug-free workplaces for their employees.

Transactions subject to the suspension/debarment rules (covered transactions) include grants, subgrants, cooperative agreements, and prime contracts under such awards. Subcontracts are not included.

DD. Royalty Free Rights to Use Software or Documentation Developed

CFR 200.315 Intangible property.

- a) Title to intangible property (see §200.59 Intangible property) acquired under a Federal award vests upon acquisition in the non-Federal entity. The non-Federal entity must use that property for the originally-authorized purpose, and must not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in §200.313 Equipment paragraph (e).
- b) The non-Federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The Federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.
- c) The non-Federal entity is subject to applicable regulations governing patents and inventions, including government wide regulations issued by the Department of Commerce at 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements."
- d) The Federal Government has the right to:
Obtain, reproduce, publish, or otherwise use the data produced under a Federal award;
and
- e) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

EE. Debarment and Suspension

Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. (2 CFR 200, Subpart F, Appendix II)

FF. Renewal of Contract: This contract may be renewed by the Commonwealth upon written agreement of both parties for five (5) successive one-year (1-yr) periods, under the terms and conditions of the current contract, and at a reasonable time (approximately 90 days) prior to the expiration.

[SIGNATURE PAGE(S) TO FOLLOW]

Crossroads Software Maintenance and Enhancement Services

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

SUPPLIER NAME GCOM Software LLC

Virginia Department of Health (VDH)

DocuSigned by:
By: Lisa Mascolo
(Signature)

DocuSigned by:
By: Karen Shelton, MD
(Signature)

Name: Lisa Mascolo
(Print)

Name: Karen Shelton, MD
(Print)

Title: CEO

Title: State Health Commissioner

Date: 9/28/2023 | 5:56:35 PM EDT

Date: 9/29/2023 | 10:21:23 AM EDT

Address for Notice:
9175 Guilford Road
Columbia Maryland 21046

Address for Notice:
109 Governor Street
Richmond, VA 23219

Attention: Supplier Contact
Lisa Mascolo
lisa.mascolo@gcomsoft.com

Attention: Contract Administrator
Megan Nason email: megan.nason@vdh.virginia.gov
arden.lynn@vdh.virginia.gov