

**PROCUREMENT CONTRACT
(Long Form)**

This Procurement Contract (“**Contract**”) is by and between the Grand Rapids Public Utilities Commission, located at 500 SE 4th St, Grand Rapids, MN 55744 (“**GRPUC**”), and WinCan LLC, located at 300 Cedar Ridge Dr Suite 308, Pittsburgh, PA 15205, located at (“**Contractor**”). GRPUC and Contractor may be referred to jointly as the “**Parties**” or individually as a “**Party**.”

Recitals

A. GRPUC has solicited and received quotations from contractors for WinCan Software (“**Solicitation**”);

B. Contractor provided a response to the Solicitation indicating its interest in and ability to provide the goods or services requested in the Solicitation; and

C. Subsequent to an evaluation in accordance with the terms of the Solicitation and negotiation, the Parties desire to enter into a contract.

Accordingly, the Parties agree as follows:

Contract

1. Term of Contract

1.1 Effective date. The effective date of this Contract is April 1, 2022. The Contractor must not begin work under this Contract until this Contract is fully executed and the Contractor has been notified by GRPUC’s Authorized Representative to begin the work.

1.2 Expiration date. The expiration date of this Contract is December 31, 2022, or until all of Contractor’s obligations have been satisfactorily fulfilled, whichever occurs first. The contract may be extended for up to an additional 6 months, in increments as determined by GRPUC, through a duly executed amendment.

2. Contractor’s Duties

2.1 The Contractor shall:

Provide WinCan VX-Expert, Training, VC200 for RX, Razor Ripsaw USB capture card, Dell Laptop as detailed in Software quote E220228913

(The services (if any) to be provided by Contractor to GRPUC are referred to as the “**Services**.” The goods (if any) to be provided by Contractor to GRPUC are referred to as the “**Goods**.”). Contractor’s precise duties, specifications, deliverables, and completion dates related to the Goods and Services are more specifically described in **Exhibit C**.

- 2.2 GRPUC may make changes to the general scope of Goods and Services (including but not limited to, suspension of performance, changes in time of performance, schedule, quantities, or specifications) by written notice, or by oral notice subsequently confirmed by GRPUC in writing within ten (10) days thereafter, to Contractor. If such changes affect the cost of or the time required to provide the Goods and Services, an equitable adjustment in the schedule and compensation under this Contract shall be made. Contractor shall proceed with providing the Goods and Services as so changed, notwithstanding any dispute regarding such equitable adjustment. Any claim of such adjustment must be submitted to GRPUC in writing within thirty (30) days from the date the change is ordered, and Contractor shall not be entitled to any adjustment unless such written claim is so submitted.
- 2.3 GRPUC may from time to time, require additional Services or Goods from Contractor. Such additional Services or Goods, including the amount of compensation for such additional Services or Goods, mutually agreed upon by and between GRPUC and Contractor, shall be effective when incorporated by written amendment to this Contract. Additional Services or Goods shall not begin until the amendment is executed. Thereafter, such additional Services or Goods shall be subject to the terms of this Contract.
- 2.4 Contractor agrees that all Goods and Services shall be provided in accordance with all applicable laws, rules, regulations, ordinances, codes, and orders of all federal, state, and local governmental authorities, agencies, departments, or bureaus having jurisdiction and which affect the Goods or Services hereunder (“**Legal Requirements**”) without extra charge or expense. Contractor will be responsible for a violation of any such Legal Requirements arising out of the provision of Goods or Services by Contractor and will indemnify, defend, and hold harmless GRPUC from and against any fine or expense, including reasonable attorneys’ fees and disbursements, resulting to it by reason of any such violation by Contractor.
- 2.5 The Goods and Services will be provided in a manner that is consistent with the level of care and skill exercised by members of Contractor’s profession currently working under similar conditions. All Goods and Services not conforming to this standard will be considered defective and Contractor shall, at no cost to GRPUC, promptly and satisfactorily correct all such defective Goods and Services. All Services shall be performed and all Goods shall be produced and delivered to the satisfaction of GRPUC, and in accordance with the Legal Requirements. Payment shall be withheld for Goods or Services found by GRPUC to be unsatisfactory or in violation of the Legal Requirements.
- 2.6 Contractor shall ensure that all persons who perform the Services or produce or deliver the Goods shall be professionally competent and properly qualified. If so requested by GRPUC, Contractor shall remove any person GRPUC deems incompetent, careless, or otherwise objectionable. At all times Contractor will be responsible for the acts, omissions, work, materials, and equipment of its employees, subcontractors, and agents and any other person, directly or indirectly, employed by any of them.
- 2.7 Contractor shall cooperate fully with GRPUC, other GRPUC contractors, municipalities, local government officials, public utility companies, and others as may be directed by GRPUC. This shall include attendance at meetings, discussions, and hearings as may be

requested by GRPUC, furnishing data as may be requested from time to time by GRPUC to effect such cooperation, and compliance with all directives issued by GRPUC.

- 2.8 Contractor is solely responsible and assumes full and exclusive liability for the payment of all contributions or taxes to be paid on or to persons employed by Contractor, and for payment of all sales, use, or other taxes of whatever nature levied or assessed against GRPUC arising out of the furnishing of the Services or production or delivery of the Goods, and will indemnify, defend, and hold harmless GRPUC from any such liability.
- 2.9 Contractor shall be responsible for the health and safety, and shall provide and maintain a safe working environment, for all its employees, agents, subcontractors, and invitees. Contractor shall adopt, supervise, and enforce reasonable and adequate safety requirements, including GRPUC's work safety rules and any safety plan or requirements which may be established by GRPUC, and shall at all times observe and comply fully with all Legal Requirements relating to health and safety.
- 2.10 Contractor is responsible for the handling and distribution of its own tools, equipment, and materials. Contractor shall confine its tools, equipment, and materials, and its operations, to areas directed by GRPUC. Contractor shall organize and coordinate, well in advance of the time required by this Contract, the procurement and delivery of all necessary materials, supplies, and equipment so that they will be available as needed for timely completion of the Goods and Services.
- 2.11 At the time GRPUC accepts the Goods from Contractor, Contractor shall sell, assign, transfer, convey and deliver to GRPUC, all of Contractor's right, title and interest in the Goods, free and clear of any mortgage, pledge, lien, charge, security interest, claim or other encumbrance ("**Encumbrance**"). Contractor shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be necessary to transfer Contractor's right, title and interest in the Goods to GRPUC, free and clear of any Encumbrances. Contractor has all risk of loss until GRPUC accepts the Goods.]

3. Representations and Warranties

- 3.1 GRPUC is authorized to enter into this Contract.
- 3.2 Contractor warrants that it is duly qualified and shall perform its obligations under this Contract in accordance with the commercially reasonable standards of care, skill, and diligence in Contractor's industry, trade, or profession, and in accordance with the specifications set forth in this Contract, to the satisfaction of GRPUC.
- 3.3 Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, by-laws, and applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind Contractor to its terms.
- 3.4 Contractor warrants that at the time GRPUC accepts the Goods: (A) Contractor has good title to the Goods, free and clear of Encumbrances, and (B) the Goods are in good condition

and are adequate for the uses to which they are being put, and none of such Goods are in need of maintenance or repairs.]

4. Time

The Contractor must comply with all the time requirements described in this Contract. In the performance of this Contract, time is of the essence.

5. Consideration and Payment

5.1 Consideration. GRPUC will pay for performance by the Contractor under this Contract as follows:

5.1.1 Compensation. The Contractor will be paid Twelve Thousand Two Hundred and Thirty Five Dollars (\$12,235) in accordance with **Exhibit D**. Plus Shipping costs not to exceed \$200.

5.1.2 Total obligation. The total obligation and liability of GRPUC under this Contract will not exceed Twelve Thousand Four Hundred and Thirty Five Dollars (\$12,435).

5.2 Payment.

5.2.1 Invoices. GRPUC will pay the Contractor after the Contractor presents an itemized invoice for the Services actually performed, and Goods actually delivered to GRPUC, in accordance with Section 1 of **Exhibit A**. Invoices must be submitted timely and according to the schedule set forth on **Exhibit D**.

5.2.2 Retainage. No more than ninety percent (90%) of the amount due under this Contract may be paid until Contractor has performed all of its obligations under this Contract to GRPUC's satisfaction.

6. Authorized Representative

GRPUC's Authorized Representative is Steve Mattson Water Wastewater Manager at the following business address: 500 SE 4th St, Grand Rapids, MN 55744, and the following telephone number: 218-326-7195, or his/her successor or delegate, and has the responsibility to monitor the Contractor's performance.

Contractor's Authorized Representative is Tim Mallon at the following business address: 300 Cedar Ridge Dr, Suite 308, Pittsburgh, PA 15205, and the following telephone number: 412-489-6229, or his/her successor. If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must immediately notify GRPUC.

7. Exhibits

The following Exhibits are attached and incorporated into this Contract. In the event of a conflict between the terms of this Contract and its Exhibits (including any supplements), or between Exhibits (including any supplements), the order of precedence is first the Contract, and then in the following order:

- Exhibit A: Contract Terms
- Exhibit B: Insurance Terms
- Exhibit C: Specifications, Duties, and Scope of Work
- Exhibit D: Price and Payment Schedule

[The Signature Page Follows]

WinCan



X Tim Mallon

Tim Mallon

Signed by: S-1-12-1-1096126687-1140658491-1331081862-690639259/03ab988e-f6af-4ae6-9ebe-2e996516d8a6

Print Name: Tim Mallon

Title: East Regional Sales Manager

Date: 04/04/22

Grand Rapids Public Utilities Commission

By: Julie Kennedy

Print Name: Julie A. Kennedy

Title: General Manager

Date: 04-06-2022

Exhibit A: Contract Terms

1. Prompt Payment and Invoicing.

1.1 Prompt Payment. GRPUC will pay the Contractor within thirty (30) days following receipt of an undisputed invoice. Terms requesting payment in less than thirty (30) days will be changed to read "Net 30 days." Notwithstanding the foregoing, GRPUC may pay the Contractor in advance in its sole discretion.

The payment for each invoice will only be made for Goods received or Services actually performed that have been accepted by GRPUC, and meet all terms, conditions, and specifications of the Contract.

1.2 Invoicing. The invoice must be in the same format as the sample invoice form approved as **Exhibit D, Supplement 1**, unless an alternative format is approved in writing by GRPUC's Authorized Representative.

2. Termination.

2.1 Termination for Convenience. GRPUC may cancel this Contract at any time, with or without cause, upon thirty (30) days' written notice to the Contractor. Upon termination for convenience, the Contractor will be entitled to payment, determined on a pro rata basis, for Services satisfactorily performed and Goods satisfactorily produced and delivered.

2.2 Termination for Breach. GRPUC may terminate this Contract, with cause, upon thirty (30) days' written notice to Contractor of the alleged breach and opportunity to cure. If after thirty (30) days, the alleged breach has not been remedied, GRPUC may immediately terminate the Contract.

2.3 Termination by Mutual Agreement. The Parties may terminate this Contract at any time by mutual written agreement.

2.4 Effect of Termination. Upon receipt of any notice of termination Contractor shall immediately stop performance of the Services and stop production and delivery of the Goods to the extent specified in such notice. In no event shall GRPUC be liable for any loss of revenue or profit incurred by Contractor as a result of any termination.

2.5 Return of Information. Upon termination of this Contract, or earlier upon GRPUC's request, Contractor shall deliver to GRPUC all items requested by GRPUC containing any Confidential Information or work product information or make such other disposition thereof as GRPUC may direct in writing.

3. Force Majeure.

Neither Party shall be responsible to the other or considered in default of its obligations within this Contract to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot, disruption of government, or other catastrophes beyond the reasonable control of the Party unless the act or occurrence could have been reasonably foreseen and reasonable action

could have been taken to prevent the delay or failure to perform. A Party relying on this provision to excuse performance must provide the other Party prompt written notice of the inability to perform and take all necessary steps to bring about performance as soon as practicable.

4. Confidentiality.

In connection with Contractor's provision of the Goods and Services under this Contract ("**Purpose**") GRPUC may disclose to Contractor, or Contractor may otherwise receive access to, confidential or proprietary information of GRPUC ("**Confidential Information**"). Contractor shall use the Confidential Information solely for the Purpose and shall not disclose or permit access to Confidential Information other than to its employees, officers, and advisors (collectively, "**Representatives**") who: (a) need to know such Confidential Information for the Purpose; (b) know of the existence and terms of this Contract; and (c) agree to be bound by the confidentiality terms contained herein. Contractor shall safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its most sensitive information and no less than a reasonable degree of care. Contractor shall promptly notify GRPUC of any unauthorized use or disclosure of Confidential Information and cooperate with GRPUC to prevent further use or disclosure. Contractor will be responsible for any breach of this paragraph caused by its Representatives. If Contractor is required by law or court order to disclose Confidential Information, Contractor shall provide GRPUC with prompt written notice thereof, so that GRPUC may seek a protective order or other appropriate remedy, as well as notice of the terms and circumstances surrounding such request or requirement. Contractor and its Representatives will use reasonable efforts to obtain and will not oppose action by GRPUC to obtain such protective order or other appropriate remedy. If such protective order or other remedy is not obtained, then Contractor will furnish only that portion of the Confidential Information which Contractor is advised by Contractor's legal counsel is legally required and will exercise all reasonable efforts to obtain assurance that confidential treatment, if available, will be accorded such Confidential Information. This Section 4 is subject to any limitations or obligations imposed by the Minnesota Government Data Practices Act ("**MGDPA**").

5. Indemnification.

5.1 In the performance of this Contract, the Indemnifying Party must indemnify, save, and hold harmless GRPUC, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by GRPUC, to the extent caused by Indemnifying Party's:

- Intentional, willful, or negligent acts or omissions; or
- Actions that give rise to strict liability; or
- Breach of contract or warranty.

"**Indemnifying Party**" is defined to include the Contractor, Contractor's reseller, any third party that has a business relationship with the Contractor, and Contractor's agents and employees, to the fullest extent permitted by law. The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of GRPUC's sole negligence. This clause will not be construed to bar any legal remedies the

Indemnifying Party may have for GRPUC's failure to fulfill its obligation under this Contract.

5.2 Nothing within this Contract, whether express or implied, shall be deemed to create an obligation on the part of GRPUC to indemnify, defend, hold harmless or release an Indemnifying Party. This shall extend to all agreements related to the subject matter of this Contract, and to all terms subsequently added, without regard to order of precedence.

6. Subcontracting and Subcontractor Payment.

6.1 Subcontracting. A subcontractor is a person or company that has been awarded a portion of the Contract by Contractor. Only subcontractors that have been approved by GRPUC can be used for this Contract.

After the effective date of the Contract, the Contractor shall not, without prior written approval of GRPUC, subcontract for the performance of any of the Contractor's obligations that were not already approved for subcontracting when the Contract was awarded. During this Contract, if an approved subcontractor is determined to be performing unsatisfactorily by GRPUC, the Contractor will receive written notification that the subcontractor can no longer be used for this Contract.

The provisions of the Contract shall apply with equal force and effect to all approved subcontractors engaged by the Contractor. Notwithstanding approval by GRPUC, no subcontract shall serve to terminate or in any way affect the primary legal responsibility of the Contractor for timely and satisfactory performance of the obligations contemplated by the Contract.

6.2 Subcontractor Payment. Contractor must pay any subcontractor within ten (10) days of Contractor's receipt of payment from GRPUC for undisputed services provided by the subcontractor. Contractor must pay interest of 1-1/2 percent (1.5%) per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from Contractor shall be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action. So long as it does not conflict with this Contract, subcontractor payments will be set forth in the agreement between Contractor and the subcontractor.

7. Government Data Practices.

The Contractor and GRPUC must comply with the MGDPA, as it applies to all data provided by GRPUC under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the MGDPA, by either the Contractor or GRPUC.

If the Contractor receives a request to release the data referred to in this clause, the Contractor must immediately notify and consult with GRPUC's Authorized Representative as to how the Contractor should respond to the request. The Contractor's response to the request shall comply with applicable law.

8. Intellectual Property Rights.

8.1 Definitions. For the purpose of this Section, the following words and phrases have the assigned definitions:

8.1.1 "**Documents**" are the originals of any databases, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Contractor, its employees, agents, or subcontractors, in the performance of this Contract.

8.1.2 "**Pre-Existing Intellectual Property**" means intellectual property developed prior to or outside the scope of this Contract, and any derivatives of that intellectual property.

8.1.3 "**Works**" means all data, databases, reports, notes, studies, photographs, negatives, designs, drawings, maps, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Contractor, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this Contract. "**Works**" includes Documents.

8.2 Ownership. GRPUC owns all rights, title, and interest in all of the intellectual property rights in the Works and Documents created and paid for under this Contract. The Documents shall be the exclusive property of GRPUC and all such Documents must be immediately returned to GRPUC by the Contractor upon completion or cancellation of this Contract. The Contractor assigns all right, title, and interest it may have in the Works and the Documents to GRPUC. The Contractor must, at the request of GRPUC, execute all papers and perform all other acts necessary to transfer or record GRPUC's ownership interest in the Works and Documents.

Notwithstanding anything else in this Contract to the contrary, GRPUC retains and owns all rights, title, and interest in and to its data and database whether created before, during, or after this Contract.

8.3 Pre-existing Intellectual Property. Each Party shall retain ownership of its respective Pre-Existing Intellectual Property. The Contractor grants GRPUC a perpetual, irrevocable, non-exclusive, royalty free license for Contractor's Pre-Existing Intellectual Property that are incorporated in the Goods or Services that are purchased through the Contract.

8.4 Obligations.

8.4.1 Representation. The Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the

sole property of GRPUC, and that neither Contractor nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Contractor represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities.

8.4.2 Indemnification. Notwithstanding any other indemnification obligations addressed within this Contract, the Contractor will indemnify, defend, and hold harmless GRPUC, at the Contractor's expense, from any action or claim brought against GRPUC to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Contractor's or GRPUC's opinion is likely to arise, the Contractor must, at GRPUC's discretion, either procure for GRPUC the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing works or documents as necessary and appropriate to obviate the infringement claim. This remedy of GRPUC will be in addition to and not exclusive of other remedies provided by law.]

9. Copyright.

The Contractor shall save and hold harmless GRPUC, its officers, agents, servants and employees, from liability of any kind or nature, arising from the use of any copyrighted or noncopyrighted compositions, secret process, patented or nonpatented invention, article or appliance furnished or used in the performance of the Contract.

10. GRPUC Audits.

The Contractor's books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by GRPUC for six (6) years from the expiration or termination of this Contract. After reasonable notice, Contractor shall make such books, records, documents, and accounting procedures and practices available to GRPUC for its examination and audit.

11. Publicity and Endorsement.

11.1 Publicity. Any publicity regarding the subject matter of this Contract must identify GRPUC as the sponsoring agency and must not be released without prior written approval from GRPUC's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, information posted on corporate or other websites, research, reports, signs, and similar public notices prepared by or for the Contractor individually or jointly with others, or any subcontractors, with respect to the Goods or Services provided resulting from this Contract.

11.2 Endorsement. The Contractor must not claim that GRPUC endorses its products or services.

12. Debarment by the State, its Departments, Commissions, Agencies, or Political Subdivisions.

Contractor certifies that neither it nor its principals is presently debarred or suspended by the Federal government, state, or any of the state's departments, commissions, agencies, or political subdivisions. Contractor's certification is a material representation upon which the Contract award was based. Contractor shall provide immediate written notice to GRPUC's Authorized Representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

13. Equal Employment, Nondiscrimination, and Affirmative Action.

In connection with the work under this Contract, Contractor agrees to comply with the applicable Legal Requirements related to equal employment opportunity, nondiscrimination, affirmative action, and nonretaliation.

14. General / Miscellaneous.

14.1 Observance of GRPUC Policies. When Contractor's employees are working on the premises of GRPUC, wherever located, they shall observe the working rules, policies, and procedures of GRPUC, including, but not limited to, its respectful workplace policy.

14.2 Independent Contractor. It is understood and agreed that in providing the Goods and Services hereunder, Contractor shall act in the capacity of an independent contractor and not as an employee, partner, joint venturer, or agent of GRPUC. Contractor agrees that unless otherwise instructed in writing it shall not represent itself as the agent or legal representative of GRPUC for any purpose whatsoever. Contractor shall be solely responsible for the remuneration of and the payment of any and all taxes with respect to its employees and contractors and any claims with respect thereto and shall be solely responsible for the withholding and payment of all federal, state, and local income taxes as well as all FICA and FUTA taxes applicable to it, its employees, and its contractors. Contractor acknowledges that as an independent contractor, neither it nor any of its employees or contractors shall be eligible for any GRPUC employee benefits, including, but not limited to, vacation, sick, medical or dental insurance, or pension benefits.

14.3 Further Assurances. Each of the Parties shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions of this Contract and give effect to the transactions contemplated by this Contract.

14.4 Governing Law, Jurisdiction, and Venue. Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Itasca County, Minnesota.

14.5 Notices. Any notice or other communication to any Party in connection with this Contract shall be in writing and shall be sent by hand-delivery, email, fax, overnight courier, or United

States mail (postage prepaid) addressed to the address set forth below. All periods of notice shall be measured from the date of delivery thereof if hand-delivered, from the date of sending thereof if sent by email or fax (effective upon confirmation of receipt), from the first day after the date of sending if sent by overnight courier, or from three (3) business days after the date of mailing if mailed. Any Party may change such Party's address for notices by notice given not less than ten (10) calendar days prior to the effective date of the change.

GRPUC
Address:
500 SE 4th St
Grand Rapids, MN 55744
Attn: Steve Mattson
Email: srmattson@grpuc.org

Win Can
Address:
300 Cedar Ridge Dr Suite 308
Pittsburgh, PA, 15205
Attn: _____
Email: _____

14.6 Entire Agreement. This Contract (including any exhibits) represents the only agreement between the Parties concerning the subject matter hereof and supersedes all other prior agreements whether written or oral, relating thereto.

14.7 Modification and Waiver. No purported amendment, modification, or waiver of any provision hereof shall be binding unless set forth in a written document signed by all Parties (in the case of amendments or modifications) or by a Party to be charged thereby (in the case of waivers). Any waiver shall be limited to the circumstance or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term hereof or of the same circumstance or event upon any recurrence thereof.

14.8 Severability. If any provision of this Contract is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable and this Contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never constituted a part hereof, and the remaining provisions shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom. Furthermore, in lieu of such illegal, invalid or unenforceable provision there shall be added automatically as part of this Contract a legal, valid, and enforceable provision as similar in terms to the illegal, invalid, or unenforceable provision as may be possible.

14.9 Binding Effect; Assignment. This Contract shall be binding on the Parties and on their respective heirs, devisees, representatives, successors, and assigns. Contractor shall not assign, sublet, or subcontract the Goods or Services or any portion thereof without the prior written consent of GRPUC. Such consent shall not relieve Contractor of its obligations or liabilities under the Contract.

14.10 Counterparts; Electronic Signatures. This Contract may be executed in separate counterparts with the same effect as if all signatures were on the same Contract. For purposes of this Contract, a telecopy, electronic, or facsimile Contract and signature shall be deemed as, and shall serve as, an original Contract and signature.

14.11 Attorneys' Fees. In the event of any litigation between the Parties hereto with respect to this Contract, the prevailing party (the party entitled to recover the costs of suit, at such time as all appeals have been exhausted or the time for taking such appeals has expired) shall be entitled to recover reasonable attorneys' fees in addition to such other relief as the court may award.

14.12 Survival. The obligations of Contractor hereunder, including, without limitation, obligations concerning indemnity, warranties, confidentiality, intellectual property and defense of GRPUC, shall survive the expiration or earlier termination of this agreement.

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Exhibit A, Supplement 1

IT TERMS

SECURITY AND DATA PROTECTION

Contractor is responsible for the security and protection of GRPUC data subject to and related to Software Services in this Contract. The terms, conditions, and provisions of this Security and Data Protection section take precedence and will prevail over any other terms, conditions, and provisions of the Contract, if in conflict. This Security and Data Protection section, including its sub-sections, survives the completion, termination, expiration, or cancellation of the Contract.

For the purposes of this Security and Data Protection section, the following terms have the following meanings:

“**Software Services**” includes “cloud computing” as defined by the U.S. Department of Commerce, NIST Special Publication 800-145 (currently available online at: <http://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-145.pdf>) and any other software, hardware, hosting service, subscription, or other service or product by which Contractor stores, transmits, processes or otherwise has access to GRPUC data.

“**Data**” (whether or not capitalized) has the meaning of “government data” in Minn. Stat. § 13.02, subd. 7.

“**Not public data**” (whether or not capitalized) has the meaning in Minn. Stat. § 13.02, subd. 8a.

“**Security incident**” (whether or not capitalized) means any actual, successful or suspected: (1) improper or unauthorized access to, viewing of, obtaining of, acquisition of, use of, disclosure of, modification of, alteration to, loss of, damage to or destruction of GRPUC data; (2) interference with an information system; (3) disruption of or to Contractor’s service(s); or (4) any similar or related incident.

“**Privacy incident**” (whether or not capitalized) means violation of the MGDPA; violation of federal data disclosure or privacy requirements in federal laws, rules and regulations; or breach of a contractual obligation to protect GRPUC data. This includes, but is not limited to, improper or unauthorized access to, viewing of, obtaining of, acquisition of, use of, disclosure of, damage to, loss of, modification of, alteration to or destruction of GRPUC data protected by such GRPUC or federal laws or by contract.

1. **Data Ownership.** GRPUC solely and exclusively owns and retains all right, title and interest, whether express or implied, in and to any and all GRPUC data. Contractor has no and acquires no right, title or interest, whether express or implied, in and to GRPUC data.

Contractor will only use GRPUC data for the purposes set forth in the Contract. Contractor will only access GRPUC data as necessary for performance of this Contract. Contractor will not access GRPUC user accounts except to respond to service or technical problems or at GRPUC’s specific request.

All GRPUC data, including copies, summaries and derivative works thereof, must be remitted, in a mutually agreeable format and media, to GRPUC by the Contractor upon request or upon completion, termination or cancellation of the Contract. The foregoing sentence does not apply if GRPUC authorizes in writing the Contractor to sanitize or destroy the data and the Contractor certifies in writing the sanitization or destruction of the data. Within ninety (90) days following any remittance of GRPUC data to GRPUC, Contractor shall, unless otherwise instructed by GRPUC in writing, sanitize or destroy any remaining data and certify in writing that the sanitization or destruction of the data has occurred. Any such remittance, sanitization or destruction will be at the Contractor's sole cost and expense.

In the event Contractor receives a request to release any GRPUC data, Contractor must immediately notify GRPUC. GRPUC will give Contractor instructions concerning the release of the data to the requesting party before the data is released. Contractor must comply with GRPUC's instructions. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data by Contractor.

2. **Notification of Incidents.** If Contractor becomes aware of or has reasonable suspicion of a privacy incident or security incident regarding any GRPUC data, Contractor must report such incident to GRPUC as soon as possible, but no later than twenty-four (24) hours after such incident. The decision to notify the affected data subjects and the form of such notice following report of a privacy incident or security incident are the responsibility of GRPUC. Notwithstanding anything to the contrary in this Contract, Contractor will indemnify, hold harmless and defend GRPUC and its officers, and employees for and against any claims, damages, costs and expenses related to any privacy incident or security incident involving any GRPUC data. For purposes of clarification, the foregoing sentence shall in no way limit or diminish Contractor's obligation(s) to indemnify, save, hold harmless, or defend GRPUC under any other term of this Contract. Contractor will reasonably mitigate any harmful effects resulting from any privacy incident or security incident involving any GRPUC data.
3. **Security Program.** Contractor will use best efforts to protect and secure GRPUC data related to this Contract. Contractor will establish and maintain an Information Security Program ("**Program**") that includes an information security policy applicable to any and all Software Services ("**Policy**"). Contractor's Program and Policy must align with appropriate industry security frameworks and standards.

Upon GRPUC's request, Contractor will make its Policy available to GRPUC on a confidential, need-to-know basis, along with other related information reasonably requested by GRPUC regarding Contractor's security practices and policies. Unless inconsistent with applicable laws, Contractor and GRPUC must treat the Policy and related information on security practices and policies that are specific to GRPUC as confidential information and as not public data pursuant to Minn. Stat. § 13.37.

4. **Data Management.** Contractor will not use GRPUC data, including production data, for testing or development purposes unless authorized in writing by GRPUC. Contractor will implement and maintain procedures to physically and logically segregate GRPUC data, unless otherwise explicitly authorized by GRPUC.

5. **Data Encryption.** Contractor must encrypt all GRPUC data at rest and in transit, in compliance with FIPS Publication 140-2 or applicable law, regulation or rule, whichever is a higher standard. All encryption keys must be unique to GRPUC data. Contractor will secure and protect all encryption keys to GRPUC data. Encryption keys to GRPUC data will only be accessed by Contractor as necessary for performance of this Contract.
6. **Data Storage.** Contractor warrants that any and all GRPUC data will be stored, processed, and maintained solely on designated servers and that no such data at any time will be processed on or transferred to any portable computing device or any portable storage medium, unless that storage medium is in use as part of the Contractor's designated backup and recovery processes.
7. **Data Center and Monitoring/Support Locations.** During the term of the Contract, Contractor will: (1) locate all production and disaster recovery data centers that store, process or transmit GRPUC data only in the continental United States, (2) store, process and transmit GRPUC data only in the continental United States, and (3) locate all monitoring and support of all Software Services only in the continental United States. GRPUC has the right to on-site visits and reasonable inspection of the data centers upon reasonable notice to Contractor prior to the visit.
8. **Security Audits & Remediation.** Contractor will audit the security of the systems and processes used to provide any and all Software Services, including those of the data centers used by Contractor to provide any and all Software Services to GRPUC. This security audit: (1) will be performed at least once every calendar year; (2) will be performed according to the Statement on Standards for Attestation Engagements (SSAE) 16 Service Organization Control (SOC) 2, International Organization for Standardization (ISO) 27001, or FedRAMP; (3) will be performed by third party security professionals at Contractor's election and expense; (4) will result in the generation of an audit report ("**Contractor Audit Report**"), which will, to the extent permitted by applicable law, be deemed confidential information and as not public data under the MGDPA; and (5) may be performed for other purposes in addition to satisfying this section.

Upon GRPUC's reasonable, advance written request, Contractor will provide to GRPUC a copy of the Contractor Audit Report.

Contractor will make best efforts to remediate any control deficiencies identified in the Contractor Audit Report in a commercially reasonable timeframe.

If GRPUC becomes aware of any other Contractor controls that do not substantially meet GRPUC's requirements, GRPUC may request remediation from Contractor. Contractor will make best efforts to remediate any control deficiencies identified by GRPUC or known by Contractor, in a commercially reasonable timeframe.

9. **Subcontractors and Third Parties.** Contractor warrants that no GRPUC data will be transmitted, exchanged or otherwise provided to other parties except as specifically agreed to in writing by GRPUC. Contractor must ensure that any contractors, subcontractors, agents and others to whom it provides GRPUC data, agree in writing to be bound by the same restrictions and conditions under this Contract that apply to Contractor with respect to such data.

10. **Compliance with Data Privacy and Security Laws and Standards.** Contractor shall comply with all applicable local, state, and federal data privacy and data security laws, rules, and regulations.
11. **Remedies.** Contractor acknowledges that GRPUC, because of the unique nature of its data, would suffer irreparable harm in the event that Contractor breaches its obligation under this Security and Data Protection section, and monetary damages may not adequately compensate GRPUC for such a breach. In such circumstances, GRPUC will be entitled, in addition to monetary relief, to injunctive relief or specific performance as may be necessary to restrain any continuing or further breach by Contractor, without showing or proving any actual damages sustained by GRPUC.
12. **Business Continuity.** Contractor shall have written business continuity and disaster recovery plans that define the roles, responsibilities and procedures necessary to ensure that Software Services provided under this Contract shall be maintained continuously in the event of a disruption to the Contractor's operations, regardless of the cause of the disruption. Such plans must, at a minimum, define the Contractor's actions to address the impacts of the following key areas likely to cause a disruption to Contractor's operations: loss of key personnel, loss of facility, and loss of information technology. Contractor must conduct testing and review of its business continuity and disaster recovery plan at least annually. Upon GRPUC's request, Contractor must also participate, at mutually agreed upon times, in GRPUC business continuity and disaster recovery testing, training, and exercise activities.

Any term or condition that allows the Contractor to terminate the Contract for any or no reason (i.e., termination for convenience) is null and void. In the event of termination or cancellation of this Contract for any reason, the Contractor shall continue to provide any then-existing Software Services for as long as GRPUC needs to transfer its data, software and other assets to an alternate service or service provider. After any such termination or cancellation, GRPUC may purchase the continuing Software Services at the pricing in effect prior to such termination or cancellation. The fee for any such purchase shall be prorated for the period of time needed, as determined by GRPUC, and shall be reduced by the amount paid for Software Services that were not used prior to such termination or cancellation. The amount of any such fee reduction shall be determined on a pro-rata basis. The Contractor shall refund to GRPUC any unused portion of payments for Software Services.

13. **Background Checks.** Contractor represents that it has conducted and will conduct background investigations into all of Contractor's agents, employees, and subcontractors that will provide Software Services to GRPUC. Such background investigations must have been or will be conducted by investigating local, state, and federal criminal records, local, state, and federal civil case records, and employment references.

If any provision of this sub-section is found to violate any applicable laws, rules, or GRPUC policies, then the Contractor will be relieved of all obligations arising under such provision. Notwithstanding anything to the contrary in this sub-section, this sub-section is only applicable and effective to extent that it is consistent with applicable laws, rules, and GRPUC policies.

14. **Secure Coding.** Contractor warrants that all Software Services are free from any and all defects in materials, workmanship, and design. Contractor warrants that all Software Services are free from any and all viruses, malware, and other harmful or malicious code. Contractor must scan all source code for vulnerabilities, including before and after any source code changes are made and again before being placed into production, and must promptly remediate any and all vulnerabilities. Contractor must follow best practices for application code review and the most current version of the OWASP top 10.

Exhibit B: Insurance Requirements

1. Notice to Contractor.

- 1.1 The Contractor is required to submit Certificates of Insurance acceptable to GRPUC as evidence of insurance coverage requirements prior to commencing work under this Contract.
- 1.2 Contractor shall not commence work under the contract until it has obtained all the insurance described below and GRPUC has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of this Contract, unless otherwise specified in this Contract
- 1.3 The failure of the Contractor to provide a Certificate of Insurance, for the policies required under this Contract or renewals thereof, or failure of the insurance company to notify GRPUC of the cancellation of policies required under this Contract shall not constitute a waiver by GRPUC to the Contractor to provide such insurance.
- 1.4 GRPUC reserves the right to immediately terminate this Contract if the Contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Contractor. All insurance policies must be open to inspection by GRPUC, and copies of policies must be submitted to GRPUC's Authorized Representative upon written request.

2 Notice to Insurer.

The Contractor's insurance company(ies) waives its right to assert the immunity of GRPUC as a defense to any claims made under said insurance.

3 Additional Insurance Conditions. The following apply to the Contractor, or the Contractor's subcontractor:

- 3.1 Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to GRPUC with respect to any claim arising out of Contractor's performance under this Contract.
- 3.2 If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify GRPUC within five (5) business days with a copy of the cancellation notice, unless Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to GRPUC.
- 3.3 Contractor is responsible for payment of Contract-related insurance premiums and deductibles.
- 3.4 If Contractor is self-insured, a Certificate of Self-Insurance must be attached.

- 3.5 Contractor's policy(ies) shall include legal defense fees in addition to its policy limits with the exception of professional liability.
- 3.6 Contractor's insurance companies must either (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in Minnesota, or (2) be domiciled in Minnesota and have a Certificate of Authority/Compliance from the Minnesota Department of Commerce if they are not rated by AM Best.
- 3.7 An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Contract.
- 3.8 **Commercial Automobile Liability Insurance.** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this Contract, and in case any work is subcontracted the Contractor will require the subcontractor to maintain Commercial Automobile Liability insurance. Insurance minimum limits are as follows:

\$1,500,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included: Owned, Hired, and Non-owned Automobile.

Evidence of Subcontractor insurance shall be filed with the Contractor.

- 3.9 **Workers' Compensation Insurance.** Except as provided below, Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with applicable Legal Requirements, including Coverage B, Employer's Liability. Insurance **minimum** limits are as follows:

\$100,000 – Bodily Injury by Disease per employee

\$500,000 – Bodily Injury by Disease aggregate

\$100,000 – Bodily Injury by Accident

If Minn. Stat. § 176.041 exempts Contractor from Workers' Compensation insurance or if the Contractor has no employees in the state, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers' Compensation requirements.

If during the course of the Contract the Contractor becomes eligible for Workers' Compensation, the Contractor must comply with the Workers' Compensation Insurance requirements herein and provide GRPUC with a certificate of insurance.

3.10 **Professional Liability, Errors, and Omissions.** This policy will provide coverage for all claims the Contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Contractor's professional services required under the Contract. Insurance **minimum** limits are as follows:

\$2,000,000 - per claim or event
\$2,000,000 - annual aggregate

Any deductible will be the sole responsibility of the Contractor and may not exceed \$50,000 without the written approval of GRPUC. If the Contractor desires authority from GRPUC to have a deductible in a higher amount, the Contractor shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that GRPUC can ascertain the ability of the Contractor to cover the deductible from its own resources.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and Contractor shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by Contractor to fulfill this requirement.

3.11 **Network Security and Privacy Liability Insurance (or equivalent).** The coverage may be endorsed on another form of liability coverage or written on a standalone policy. Contractor shall maintain insurance to cover claims which may arise from failure of Contractor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data including but not limited to confidential or private information, transmission of a computer virus or denial of service. Insurance minimum limits are as follows:

\$2,000,000 per occurrence
\$2,000,000 annual aggregate

The following coverage shall be included: GRPUC named as an Additional Insured unless the coverage is written under a Professional Liability policy.

Exhibit C: Specifications, Duties, and Scope of Work

Provide:

WinCan VX Expert License, 1-day online training and setup, E-568-0500-00 VC200 for RX cable, Razer Ripsaw HD External USB capture card, Dell branded Notebook with docking station, delivered pre configured with WinCan software and video card drivers as detailed in quote E220228913.

Exhibit D: Price and Payment Schedule

The Contractor will be paid Twelve Thousand Two Hundred and Thirty Five Dollars (\$12,235) Plus Shipping costs not to exceed \$200.

Total obligation. The total obligation and liability of GRPUC under this Contract will not exceed Twelve Thousand Four Hundred and Thirty Five Dollars (\$12,435).