STATE OF MICHIGAN
CENTRAL PROCUREMENT SERVICES
Department of Technology, Management, and Budget
525 W. ALLEGAN ST., LANSING, MICHIGAN 48913
P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **3**

to

Contract Number **200000002065**

CONTRACTOR		STATE		
Foray Technologies, LLC		Program Manager	Various	MSP
3911 5th Avenue, Suite 300				
San Diego, CA 92103				
Lynn Slaughter		Contract Administrator	Jarrod Barron	DTMB
619-858-1360 517			(517) 249-0406	
lslaughter@foray.com			barronj1@michigan.gov	
CV0003076				

CONTRACT SUMMARY

ADAMS HARDWARE AND SOFTWARE SOLUTION

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
September 10, 2020	September 9, 2026	5 - 1 Year	September 9, 2026

PAYMENT TERMS	DELIVERY TIMEFRAME

ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
☐ P-Card	☒ PRC	☐ Other	☒ Yes	☐ No

MINIMUM DELIVERY REQUIREMENTS

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
☐		☐		September 9, 2026

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
$907,902.20	$5,109.80	$913,012.00

DESCRIPTION

Effective 12/16/2021, the parties add $5,109.80 for the hardware detailed in the attached documentation. All other terms, conditions, specifications and pricing remain the same. Per contractor, agency and DTMB Procurement approval.

Program Managers
for
Multi-Agency and Statewide Contracts

AGENCY	NAME	PHONE	EMAIL
MSP	John Bowen	517-284-3486	BowenJ1@michigan.gov
DTMB	Gordon Mayes	517-204-8026	MayesG1@michigan.gov

Item	Quantity	Item Description [2]	Unit Price	Extended Price
1	2	37.5" LED Curved Monitor, 3840 x 1600 HD Current model HP Z38c (manufacturer could change)	$1,039.95	$2,079.90
2	2	8.5" x 11.7" Flatbed Scanner, includes film holders and USB cable Current model Epson Perfection V850 Pro (manufacturer could change)	$1,339.95	$32,679.90
		Subtotal		$4,759.80
		Shipping/Handling		$350.00
		TOTAL		$5,109.80

STATE OF MICHIGAN
CENTRAL PROCUREMENT SERVICES
Department of Technology, Management, and Budget
525 W. ALLEGAN ST., LANSING, MICHIGAN 48913
P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **2**

to

Contract Number **200000002065**

CONTRACTOR		STATE		
Foray Technologies, LLC		Program Manager	Various	MSP
3911 5th Avenue, Suite 300				
San Diego, CA 92103		Contract Administrator	Jarrod Barron	DTMB
Lynn Slaughter			(517) 249-0406	
619-858-1360 517			barronj1@michigan.gov	
lslaughter@foray.com				
CV0003076				

CONTRACT SUMMARY			
ADAMS HARDWARE AND SOFTWARE SOLUTION			
INITIAL EFFECTIVE DATE	**INITIAL EXPIRATION DATE**	**INITIAL AVAILABLE OPTIONS**	**EXPIRATION DATE BEFORE**
September 10, 2020	September 9, 2026	5 - 1 Year	September 9, 2026
PAYMENT TERMS		**DELIVERY TIMEFRAME**	
ALTERNATE PAYMENT OPTIONS			**EXTENDED PURCHASING**
☐ P-Card ☒ PRC ☐ Other			☒ Yes ☐ No
MINIMUM DELIVERY REQUIREMENTS			

DESCRIPTION OF CHANGE NOTICE				
OPTION	**LENGTH OF OPTION**	**EXTENSION**	**LENGTH OF EXTENSION**	**REVISED EXP. DATE**
☐		☐		September 9, 2026
CURRENT VALUE	**VALUE OF CHANGE NOTICE**	**ESTIMATED AGGREGATE CONTRACT VALUE**		
$883,662.20	$24,240.00	$907,902.20		
DESCRIPTION				
Effective 6/25/2021, the parties add $24,240.00 for the six digital camera kits detailed in the attached cost table. All other terms, conditions, specifications, and pricing remain the same. Per contractor, agency, and DTMB Central Procurement approval.				

Program Managers
for
Multi-Agency and Statewide Contracts

AGENCY	NAME	PHONE	EMAIL
MSP	John Bowen	517-284-3486	BowenJ1@michigan.gov
DTMB	Gordon Mayes	517-204-8026	MayesG1@michigan.gov

COST TABLE

ITEM DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL COST
Nikon D870 SLR Professional series color digital camera kit (WITH LENS) which includes: • Quantity 1 – Nikon D780 DSLR Camera Body • Quantity 1 – Nikon 60mm Macro Lens • Quantity 1 – Nikon 62mm Clear Glass Filter • Quantity 1 – Nikon Camera Control Pro 2.0 Software • Quantity 1 – 16' Premium USB Cable • Quantity 1 – AC Adapter (part A and part B) • Quantity 1 – Rechargeable Battery • Quantity 1 – Battery Charger • Quantity 1 – 64 GB Secure Digital High-Capacity Storage Card (SDHC) • Quantity 1 – SD Card Reader	6	$4,040.00	**$24,240.00**

STATE OF MICHIGAN
CENTRAL PROCUREMENT SERVICES
Department of Technology, Management, and Budget

525 W. ALLEGAN ST., LANSING, MICHIGAN 48913
P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **1**

to

Contract Number **200000002065**

CONTRACTOR		STATE		
Foray Technologies, LLC		Program Manager	Various	MSP
3911 5th Avenue, Suite 300				
San Diego, CA 92103				
Lynn Slaughter		Contract Administrator	Jarrod Barron	DTMB
619-858-1360 517			(517) 249-0406	
lslaughter@foray.com			barronj1@michigan.gov	
CV0003076				

CONTRACT SUMMARY			
ADAMS HARDWARE AND SOFTWARE SOLUTION			
INITIAL EFFECTIVE DATE	**INITIAL EXPIRATION DATE**	**INITIAL AVAILABLE OPTIONS**	**EXPIRATION DATE BEFORE**
September 10, 2020	September 9, 2026	5 - 1 Year	September 9, 2026
PAYMENT TERMS		**DELIVERY TIMEFRAME**	
ALTERNATE PAYMENT OPTIONS			**EXTENDED PURCHASING**
☐ P-Card ☒ PRC ☐ Other			☒ Yes ☐ No
MINIMUM DELIVERY REQUIREMENTS			

DESCRIPTION OF CHANGE NOTICE				
OPTION	**LENGTH OF OPTION**	**EXTENSION**	**LENGTH OF EXTENSION**	**REVISED EXP. DATE**
☐		☐		September 9, 2026
CURRENT VALUE	**VALUE OF CHANGE NOTICE**		**ESTIMATED AGGREGATE CONTRACT VALUE**	
$814,925.00	$68,737.20		$883,662.20	

DESCRIPTION
Effective 3/4/2021, the parties add $68,737.20 for the hardware detailed in the attached documentation. All other terms, conditions, specifications and pricing remain the same. Per contractor, agency and DTMB Procurement approval.

Program Managers
for
Multi-Agency and Statewide Contracts

AGENCY	NAME	PHONE	EMAIL
MSP	John Bowen	517-284-3486	BowenJ1@michigan.gov
DTMB	Gordon Mayes	517-204-8026	MayesG1@michigan.gov

Item	Quantity	Item Description [2]	Unit Price	Extended Price
1	28	37.5" LED Curved Monitor, 3840 x 1600 HD Current model HP Z38c (manufacturer could change)	$1,039.95	$29,118.60
2	28	8.5" x 11.7" Flatbed Scanner, includes film holders and USB cable Current model Epson Perfection V850 Pro (manufacturer could change)	$1,339.95	$37,518.60
		Subtotal		$66,637.20
		Shipping/Handling		$2,100.00
		TOTAL		$68,737.20

STATE OF MICHIGAN PROCUREMENT

Department of Technology, Management & Budget

525 W. Allegan Street, Lansing, MI 48909

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **171-200000002065**
between
THE STATE OF MICHIGAN
and

CONTRACTOR	
	Foray Technologies, LLC
	3911 5th Ave, Suite 300
	San Diego, CA 92103
	Lynn Slaughter
	619-858-1360 Ext 517
	lslaughter@foray.com
	CV0003076

STATE			
Program Manager	Various		
Contract Administrator	Jarrod Barron	DTMB	
	517-249-0406		
	BarronJ1@michigan.gov		

CONTRACT SUMMARY			
DESCRIPTION: ADAMS Hardware and Software Solution			
INITIAL EFFECTIVE DATE	**INITIAL EXPIRATION DATE**	**INITIAL AVAILABLE OPTIONS**	**EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW**
09/10/2020	09/09/2026	5-1 year	09/09/2031
PAYMENT TERMS		**DELIVERY TIMEFRAME**	
Net 45, 1% if paid in 10 Days		N/A	
ALTERNATE PAYMENT OPTIONS			**EXTENDED PURCHASING**
☐ P-card ☐ Payment Request (PRC)	☐ Other	☒ Yes	☐ No
MINIMUM DELIVERY REQUIREMENTS			
MISCELLANEOUS INFORMATION			
New Contract established from ITN 171-200000000023. Program Managers: 1. MSP: John Bowen, BowenJ1@michigan.gov, 517-284-3486. 2. DTMB: Gordon Mayes, MayesG1@michigan.gov, 517-204-8026.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			**$814,925.00**

FOR THE CONTRACTOR:

Foray Technologies, LLC
Company Name

_____
Authorized Agent Signature

_____
Authorized Agent (Print or Type)

_____
Date

FOR THE STATE:

_____
Signature

Jarrod Barron – IT Category Specialist
Name & Title

DTMB – Central Procurement Services
Agency

_____
Date

STATE OF MICHIGAN

CONTRACT TERMS

This Software Contract (this "**Contract**") is agreed to between the State of Michigan (the "**State**") and Foray Technologies, LLC ("**Contractor**"), a Deleware limited liability company. This Contract is effective on September 10, 2020 ("**Effective Date**"), and unless earlier terminated, will expire on September 09, 2026 (the "**Term**").

This Contract may be renewed for up to five additional one-year periods. Renewal must be by written notice from the State and will automatically extend the Term of this Contract.

1. **Definitions**. For the purposes of this Contract, the following terms have the following meanings:

   "**Acceptance**" has the meaning set forth in **Section 11.5**.

   "**Acceptance Tests**" means such tests as may be conducted in accordance with **Section 11** and the Statement of Work to determine whether the Software and Hardware meets the requirements of this Contract and the Documentation.

   "**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, the term "control" (including the terms "controlled by" and "under common control with") means the direct or indirect ownership of more than fifty percent (50%) of the voting securities of a Person.

   "**Allegedly Infringing Materials**" has the meaning set forth in **Section 25.3(b)(ii)**.

   "**API**" means all Application Programming Interfaces and associated API Documentation provided by Contractor, and as updated from time to time, to allow the Software to integrate with various State and Third Party Software.

   "**Approved Open-Source Components**" means Open-Source Components that may be included in or used in connection with the Software and are specifically identified in an exhibit to the Statement of Work, and approved by the State.

   "**Authorized Users**" means all Persons authorized by the State to access and use the Software under this Contract, subject to the maximum number of users specified in the applicable Statement of Work.

   "**Business Day**" means a day other than a Saturday, Sunday or other day on which the State is authorized or required by Law to be closed for business.

"Business Owner" is the individual appointed by the agency buyer to (a) act as the agency's representative in all matters relating to the Contract, and (b) co-sign off on notice of Acceptance for the Software. The Business Owner will be identified in the Statement of Work.

"Business Requirements Specification" means the initial specification setting forth the State's business requirements regarding the features and functionality of the Software, as set forth in the Statement of Work.

"Change" has the meaning set forth in **Section 2.2.**

"Change Notice" has the meaning set forth in **Section 2.2(b).**

"Change Proposal" has the meaning set forth in **Section 2.2(a).**

"Change Request" has the meaning set forth in **Section 2.2.**

"Confidential Information" has the meaning set forth in **Section 19.1.**

"Configuration" means State-specific changes made to the Software without Source Code or structural data model changes occurring.

"Contract" has the meaning set forth in the preamble.

"Contract Administrator" is the individual appointed by each party to (a) administer the terms of this Contract, and (b) approve any Change Notices under this Contract. Each party's Contract Administrator will be identified in the Statement of Work.

"Contractor" has the meaning set forth in the preamble.

"Contractor Personnel" means all employees of Contractor or any Permitted Subcontractors involved in the performance of Services hereunder.

"Contractor's Test Package" has the meaning set forth in **Section 10.2**.

"Deliverables" means the Software, and all other documents and other materials that Contractor is required to or otherwise does provide to the State under this Contract and otherwise in connection with any Services, including all items specifically identified as Deliverables in the Statement of Work.

"Dispute Resolution Procedure" has the meaning set forth in **Section 30.1**.

"Documentation" means all user manuals, operating manuals, technical manuals and any other instructions, specifications, documents or materials, in any form or media, that describe the functionality, installation, testing, operation, use, maintenance, support, technical or other components, features or requirements of the Software.

"DTMB" means the Michigan Department of Technology, Management and Budget.

"Effective Date" has the meaning set forth in the preamble.

"Fees" means collectively, the License Fees, Implementation Fees, and Support Services Fees.

"**Financial Audit Period**" has the meaning set forth in **Section 28.1**.

"**Force Majeure**" has the meaning set forth in **Section 31.1.**

"**Hardware**" refers to any equipment purchased from Contractor as outlined in the applicable Statement of Work.

"**Harmful Code**" means any: (a) virus, trojan horse, worm, backdoor or other software or Hardware devices the effect of which is to permit unauthorized access to, or to disable, erase, or otherwise harm, any computer, systems or software; or (b) time bomb, drop dead device, or other software or Hardware device designed to disable a computer program automatically with the passage of time or under the positive control of any Person, or otherwise prevent, restrict or impede the State's or any Authorized User's use of such software.

"**HIPAA**" has the meaning set forth in **Section 18.1**.

"**Implementation Fees**" has the meaning set forth in **Section 15.2**.

"**Implementation Plan**" means the schedule included in the Statement of Work setting forth the sequence of events for the performance of Services under the Statement of Work, including the Milestones and Milestone Dates.

"**Integration Testing**" has the meaning set forth in **Section 11.1(c)**.

"**Intellectual Property Rights**" means all or any of the following: (a) patents, patent disclosures, and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the associated goodwill; (c) copyrights and copyrightable works (including computer programs), mask works and rights in data and databases; (d) trade secrets, know-how and other confidential information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable Law in any jurisdiction throughout the world.

"**Key Personnel**" means any Contractor Personnel identified as key personnel in the Statement of Work.

"**Law**" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement or rule of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

"**License Fee**" has the meaning set forth in **Section 15.1**.

"**Loss or Losses**" means all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

"**Maintenance Release**" means any update, upgrade, release or other adaptation or modification of the Software, including any updated Documentation, that Contractor may generally provide to its

licensees from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the Software.

"**Milestone**" means an event or task described in the Implementation Plan under the Statement of Work that must be completed by the corresponding Milestone Date.

"**Milestone Date**" means the date by which a particular Milestone must be completed as set forth in the Implementation Plan under the Statement of Work.

"**New Version**" means any new version of the Software that the Contractor may from time to time introduce and market generally as a distinct licensed product, as may be indicated by Contractor's designation of a new version number.

"**Nonconformity**" or **"Nonconformities"** means any failure or failures of the Software to conform to the requirements of this Contract, including any applicable Documentation.

"**Open-Source Components**" means any software component that is subject to any open-source copyright license agreement, including any GNU General Public License or GNU Library or Lesser Public License, or other obligation, restriction or license agreement that substantially conforms to the Open Source Definition as prescribed by the Open Source Initiative or otherwise may require disclosure or licensing to any third party of any source code with which such software component is used or compiled.

"**Open-Source License**" has the meaning set forth in **Section 4.**

"**Operating Environment**" means, collectively, the platform, environment and conditions on, in or under which the Software is intended to be installed and operate, as set forth in the Statement of Work, including such structural, functional and other features, conditions and components as Hardware, operating software and system architecture and configuration.

"**Permitted Subcontractor**" has the meaning set forth in **Section 8.4**.

"**Person**" means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

"**Pricing**" means any and all fees, rates and prices payable under this Contract, including pursuant to any Schedule or Exhibit hereto.

"**Pricing Schedule**" means the schedule attached as **Schedule B**, setting forth the License Fees, Implementation Fees, Support Services Fees, and any other fees, rates and prices payable under this Contract.

"**Project Manager**" is the individual appointed by each party to (a) monitor and coordinate the day-to-day activities of this Contract, and (b) for the State, to co-sign off on its notice of Acceptance for the Software. Each party's Project Manager will be identified in the Statement of Work.

"**Representatives**" means a party's employees, officers, directors, partners, shareholders, agents, attorneys, successors and permitted assigns.

"**Services**" means any of the services Contractor is required to or otherwise does provide under this Contract and any applicable Statement of Work. Services shall also include any Hardware purchased from Contractor or subcontractors pursuant to this Contract, and the maintenance and support of any Software hosted on Hardware purchased from Contractor or subcontractors pursuant to this Contract.

"**Site**" means the physical location designated by the State in, or in accordance with, this Contract or the Statement of Work for delivery and installation of the Software.

"**Software**" means Contractor's software set forth in the Statement of Work, and any Maintenance Releases or New Versions provided to the State and any Configurations made by or for the State pursuant to this Contract, and all copies of the foregoing permitted under this Contract and the License Agreement.

"**Source Code**" means the human readable source code of the Software to which it relates, in the programming language in which the Software was written, together with all related flow charts and technical documentation, including a description of the procedure for generating object code, all of a level sufficient to enable a programmer reasonably fluent in such programming language to understand, build, operate, support, maintain and develop modifications, upgrades, updates, adaptations, enhancements, new versions and other derivative works and improvements of, and to develop computer programs compatible with, the Software.

"**Specifications**" means, for the Software, the specifications collectively set forth in the Business Requirements Specification, Technical Specification, Documentation, RFP or Contractor's Bid Response, if any, for such Software, or elsewhere in the Statement of Work.

"**State**" means the State of Michigan.

"**State Data**" has the meaning set forth in **Section 18.1**.

"**State Materials**" means all materials and information, including documents, data, know-how, ideas, methodologies, specifications, software, content and technology, in any form or media, directly or indirectly provided or made available to Contractor by or on behalf of the State in connection with this Contract.

"**State Resources**" has the meaning set forth in **Section 9.1(a)**.

"**Statement of Work**" means any statement of work entered into by the parties and attached as a schedule to this Contract. The initial Statement of Work is attached as **Schedule A**, and subsequent Statements of Work shall be sequentially identified and attached as Schedules A-1, A-2, A-3, etc.

"**Stop Work Order**" has the meaning set forth in **Section 23**.

"**Support Services**" means the software maintenance and support services Contractor is required to or otherwise does provide to the State pursuant to the applicable Statement of Work.

"**Support Services Commencement Date**" means, with respect to the Software, the date on which the Warranty Period for the Software expires or such other date as may be set forth in the Statement of Work.

"**Support Services Fees**" has the meaning set forth in **Section 15.3**.

"**Technical Specification**" means, with respect to any Software, the document setting forth the technical specifications for such Software and included in the Statement of Work.

"**Term**" has the meaning set forth in the preamble.

"**Test Data**" has the meaning set forth in **Section 10.2**.

"**Test Estimates**" has the meaning set forth in **Section 10.2**.

"**Testing Period**" has the meaning set forth in **Section 11.1(b)**.

"**Third Party**" means any Person other than the State or Contractor.

"**Transition Period**" has the meaning set forth in **Section 22.3**

"**Transition Responsibilities**" has the meaning set forth in **Section 22.3**.

"**Unauthorized Removal**" has the meaning set forth in **Section 8.3(b)**.

"**Unauthorized Removal Credit**" has the meaning set forth in **Section 8.3(c)**.

"**User Data**" means all data, information and other content of any type and in any format, medium or form, whether audio, visual, digital, screen, GUI or other, that is input, uploaded to, placed into or collected, stored, processed, generated or output by any device, system or network by or on behalf of the State, including any and all works, inventions, data, analyses and other information and materials resulting from any use of the Software by or on behalf of the State under this Contract, except that User Data does not include the Software or data, information or content, including any GUI, audio, visual or digital or other display or output, that is generated automatically upon executing the Software without additional user input.

"**Warranty Period**" means the ninety (90) calendar-day period commencing on the date of the State's Acceptance of the Software.

"**Work Product**" means all State-specific deliverables that Contractor is required to, or otherwise does, provide to the State under this Contract including but not limited to computer scripts, macros, user interfaces, reports, project management documents, forms, templates, and other State-specific documents and related materials together with all ideas, concepts, processes, and methodologies developed in connection with this Contract whether or not embodied in this Contract.

2. **Statements of Work**. Contractor shall provide Services and Deliverables pursuant to Statements of Work entered into under this Contract. No Statement of Work shall be effective unless signed by each party's Contract Administrator. The term of each Statement of Work shall commence on the parties' full execution of the Statement of Work and terminate when the parties have fully performed their obligations. The terms and conditions of this Contract will apply at all times to any Statements of Work entered into by the parties and attached as a schedule to this Contract. The State shall have the right to terminate such Statement of Work as set forth in **Section 22**. Contractor acknowledges that time is of the essence with respect to Contractor's obligations under each Statement of Work and agrees that prompt and timely

performance of all such obligations in accordance with this Contract and the Statements of Work (including the Implementation Plan and all Milestone Dates) is strictly required.

2.1 <u>Statement of Work Requirements</u>. Each Statement of Work will include the following:

(a) names and contact information for Contractor's Contract Administrator, Project Manager and Key Personnel;

(b) names and contact information for the State's Contract Administrator, Project Manager and Business Owner;

(c) a detailed description of the Services to be provided under this Contract, including any training obligations of Contractor;

(d) a detailed description of the Software to be provided under this Contract, including the:

(i) version and release number of the Software;

(ii) Business Requirements Specification;

(iii) Technical Specification; and

(iv) a description of the Documentation to be provided;

(e) an Implementation Plan, including all Milestones, the corresponding Milestone Dates and the parties' respective responsibilities under the Implementation Plan;

(f) the due dates for payment of Fees and any invoicing requirements, including any Milestones on which any such Fees are conditioned, and such other information as the parties deem necessary;

(g) disclosure of all Open-Source Components (each identified on a separate exhibit to the Statement of Work), in each case accompanied by such related documents as may be required by this Contract;

(h) description of all liquidated damages associated with this Contract;

(i) description of all Hardware purchased pursuant to this Contract; and

(j) a detailed description of all State Resources required to complete the Implementation Plan.

2.2 <u>Change Control Process</u>. The State may at any time request in writing (each, a "**Change Request**") changes to the Statement of Work, including changes to the Services and Implementation Plan (each, a "**Change**"). Upon the State's submission of a Change Request, the parties will evaluate and implement all Changes in accordance with this **Section 2.2**.

(a) As soon as reasonably practicable, and in any case within twenty (20) Business Days following receipt of a Change Request, Contractor will provide the State with a written proposal for implementing the requested Change ("**Change Proposal**"), setting forth:

(i) a written description of the proposed Changes to any Services or Deliverables;

(ii)   an amended Implementation Plan reflecting: (A) the schedule for commencing and completing any additional or modified Services or Deliverables; and (B) the effect of such Changes, if any, on completing any other Services under the Statement of Work;

(iii)   any additional State Resources Contractor deems necessary to carry out such Changes; and

(iv)   any increase or decrease in Fees resulting from the proposed Changes, which increase or decrease will reflect only the increase or decrease in time and expenses Contractor requires to carry out the Change.

(b)   Within thirty (30) Business Days following the State's receipt of a Change Proposal, the State will by written notice to Contractor, approve, reject, or propose modifications to such Change Proposal. If the State proposes modifications, Contractor must modify and re-deliver the Change Proposal reflecting such modifications, or notify the State of any disagreement, in which event the parties will negotiate in good faith to resolve their disagreement. Upon the State's approval of the Change Proposal or the parties' agreement on all proposed modifications, as the case may be, the parties will execute a written agreement to the Change Proposal ("**Change Notice**"), which Change Notice will be signed by the State's Contract Administrator and will constitute an amendment to the Statement of Work to which it relates; and

(c)   If the parties fail to enter into a Change Notice within fifteen (15) Business Days following the State's response to a Change Proposal, the State may, in its discretion:

(i)   require Contractor to perform the Services under the Statement of Work without the Change;

(ii)   require Contractor to continue to negotiate a Change Notice;

(iii)   initiate a Dispute Resolution Procedure; or

(iv)   notwithstanding any provision to the contrary in the Statement of Work, terminate this Contract under **Section 22**.

(d)   No Change will be effective until the parties have executed a Change Notice. Except as the State may request in its Change Request or otherwise in writing, Contractor must continue to perform its obligations in accordance with the Statement of Work pending negotiation and execution of a Change Notice. Contractor will use its best efforts to limit any delays or Fee increases from any Change to those necessary to perform the Change in accordance with the applicable Change Notice. Each party is responsible for its own costs and expenses of preparing, evaluating, negotiating, and otherwise processing any Change Request, Change Proposal, and Change Notice.

(e)   The performance of any functions, activities, tasks, obligations, roles and responsibilities comprising the Services as described in this Contract are considered part of the Services and, thus, will not be considered a Change. This includes the delivery of all Deliverables in accordance with their respective Specifications, and the diagnosis and correction of Non-Conformities discovered in Deliverables prior to their Acceptance by the State or, subsequent to their Acceptance by the State, as necessary for Contractor to fulfill its associated warranty requirements and its Support Services under this Contract.

(f)   Contractor may, on its own initiative and at its own expense, prepare and submit its own Change Request to the State. However, the State will be under no obligation to approve or otherwise respond to a Change Request initiated by Contractor.

3.   Software License. Contractor hereby grants to the State and its Authorized Users perpetual licenses for all Contractor Software installed on Hardware purchased from Contractor or subcontractors. To the extent that any third-party Software is installed on Hardware purchased from Contractor or subcontractors, Contractor hereby grants a sublicense to said third party software for the duration of the Contract. Notwithstanding anything to the contrary found in any third-party license between Contractor and the third-party Software publisher, the State does not agree to be bound by the laws of another state or country, will not be subject to any type of arbitration, does not waive any claims or defenses including governmental or sovereign immunity, will not indemnify any third party, and does not give any third-party the ability to access the State of Michigan's systems or facilities unless that third-party complies with all applicable State policies and procedures.

4.   Open-Source Licenses. Any use hereunder of Open-Source Components shall be governed by, and subject to, the terms and conditions of the applicable open-source license ("**Open-Source License**"). Contractor shall identify and describe in an exhibit to the Statement of Work each of the Approved Open-Source Components of the Software, and include an exhibit attaching all applicable Open-Source Software Licenses or identifying the URL where these licenses are publicly available.

5.   Software Implementation.

5.1   Implementation. Contractor will deliver, install, configure, integrate, and otherwise provide and make fully operational the Software on or prior to the applicable Milestone Date in accordance with the criteria set forth in the Statement of Work.

5.2   Site Preparation. Unless otherwise set forth in the Statement of Work, Contractor is responsible for ensuring the relevant Operating Environment is set up and in working order to allow Contractor to deliver and install the Software on or prior to the applicable Milestone Date. Contractor will provide the State with such notice as is specified in the Statement of Work, prior to delivery of the Software to give the State sufficient time to prepare for Contractor's delivery and installation of the Software. If the State is responsible for Site preparation, Contractor will provide such assistance as the State requests to complete such preparation on a timely basis.

6.   Support Services

6.1   Support Services for On-Premise Software. If the Operating Environment for the Software is internally hosted by the State, Contractor shall provide the State with the Support Services described in the applicable Statement of Work. Such Support Services shall be provided:

(a)   Free of charge during the Warranty Period, it being acknowledged and agreed that the License Fee includes full consideration for such Services during such period.

(b)   Thereafter, for so long as the State elects to receive Support Services for the Software, in consideration of the State's payment of Support Services Fees in accordance with **Section 15** and the rates set forth in the Pricing Schedule.

7.   Data Privacy and Information Security.

7.1   Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all Contractor Representatives comply with all of the foregoing. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards, which are available at http://www.michigan.gov/dtmb/0,4568,7-150-56355_56579_56755---,00.html.

7.2   To the extent that Contractor has access to the State's computer system, Contractor must comply with the State's Acceptable Use Policy, see http://michigan.gov/cybersecurity/0,1607,7-217-34395_34476---,00.html. All Contractor Personnel will be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State's system. The State reserves the right to terminate Contractor's access to the State's system if a violation occurs.

7.3   Right of Audit by the State. Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Services and from time to time during the term of this Contract. During the providing of Services, on an ongoing basis from time to time and without notice, the State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, upon request by the State, Contractor agrees to complete, within forty-five (45) calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.

7.4   Audit Findings. With respect to State Data, Contractor must implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.

7.5   State's Right to Termination for Deficiencies. The State reserves the right, at its sole election, to immediately terminate this Contract or the Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this **Section** 7.

7.6   Security Requirements for Software Hosted on Servers Purchased from and Maintained by Contractor. If the Operating Environment for the Software is hosted on servers purchased from and maintained by Contractor or a subcontractor, Contractor shall comply with the security requirements set forth in **Schedule D** to this Contract.

8.   Performance of Services. Contractor will provide all Services and Deliverables in a timely, professional and workmanlike manner and in accordance with the terms, conditions, and Specifications set forth in this Contract and the Statement of Work.

8.1   Contractor Personnel.

(a)   Contractor is solely responsible for all Contractor Personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits.

(b)　Prior to any Contractor Personnel performing any Services, Contractor will:

    (i)　ensure that such Contractor Personnel have the legal right to work in the United States;

    (ii)　upon request, require such Contractor Personnel to execute written agreements, in form and substance acceptable to the State, that bind such Contractor Personnel to confidentiality provisions that are at least as protective of the State's information (including all Confidential Information) as those contained in this Contract; and

    (iii)　upon request, perform background checks on all Contractor Personnel prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks on Contractor Personnel. Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and Subcontractor employees, who may have access to any database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or Subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018.

(c)　Contractor and all Contractor Personnel will comply with all rules, regulations, and policies of the State that are communicated to Contractor in writing, including security procedures concerning systems and data and remote access, building security procedures, including the restriction of access by the State to certain areas of its premises or systems, and general health and safety practices and procedures.

(d)　The State reserves the right to require the removal of any Contractor Personnel found, in the judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Replacement personnel for the removed person must be fully qualified for the position. If the State exercises this right, and Contractor cannot immediately replace the removed personnel, the State agrees to negotiate an equitable adjustment in schedule or other terms that may be affected by the State's required removal.

8.2　Contractor's Project Manager. Throughout the Term of this Contract, Contractor must maintain a Contractor employee acceptable to the State to serve as Contractor's Project Manager. Contractor's Project Manager will be identified in the Statement of Work.

(a)　Contractor's Project Manager must:

    (i)　have the requisite authority, and necessary skill, experience, and qualifications, to perform in such capacity;

    (ii)　be responsible for overall management and supervision of Contractor's performance under this Contract; and

(iii) be the State's primary point of contact for communications with respect to this Contract, including with respect to giving and receiving all day-to-day approvals and consents.

(b) Contractor's Project Manager must attend all regularly scheduled meetings as set forth in the Implementation Plan, and will otherwise be available as set forth in the Statement of Work.

(c) Contractor will maintain the same Project Manager throughout the Term of this Contract, unless:

(i) the State requests in writing the removal of Contractor's Project Manager;

(ii) the State consents in writing to any removal requested by Contractor in writing;

(iii) Contractor's Project Manager ceases to be employed by Contractor, whether by resignation, involuntary termination or otherwise.

(d) Contractor will promptly replace its Project Manager on the occurrence of any event set forth in **Section 8.2(c)**. Such replacement will be subject to the State's prior written approval.

8.3 <u>Subcontractors</u>. Contractor will not, without the prior written approval of the State, which consent may be given or withheld in the State's sole discretion, engage any Third Party to perform Services. The State's approval of any such Third Party (each approved Third Party, a "**Permitted Subcontractor**") does not relieve Contractor of its representations, warranties or obligations under this Contract. Without limiting the foregoing, Contractor will:

(a) be responsible and liable for the acts and omissions of each such Permitted Subcontractor (including such Permitted Subcontractor's employees who, to the extent providing Services or Deliverables, shall be deemed Contractor Personnel) to the same extent as if such acts or omissions were by Contractor or its employees;

(b) name the State a third party beneficiary under Contractor's Contract with each Permitted Subcontractor with respect to the Services;

(c) be responsible for all fees and expenses payable to, by or on behalf of each Permitted Subcontractor in connection with this Contract, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits; and

(d) notify the State of the location of the Permitted Subcontractor and indicate if it is located within the continental United States.

9. State Obligations.

9.1 <u>State Resources and Access</u>. The State is responsible for:

(a) providing the State Materials and such other resources as may be specified in the Statement of Work (collectively, "**State Resources**"); and

(b)   if the Software is internally hosted on State systems, providing Contractor Personnel with such access to the Site(s) and Operating Environment as is necessary for Contractor to perform its obligations on a timely basis as set forth in the Statement of Work.

9.2   State Project Manager. Throughout the Term of this Contract, the State will maintain a State employee to serve as the State's Project Manager under this Contract. The State's Project Manager will be identified in the Statement of Work. The State's Project Manager will be available as set forth in the Statement of Work.

10. Pre-Delivery Testing.

10.1 Testing By Contractor. Before delivering and installing the Software and any related Hardware, Contractor must:

(a)   test the Software and any related Hardware to confirm that it is fully operable, meets all applicable Specifications and will function in accordance with the Specifications and Documentation when properly installed in the Operating Environment;

(b)   scan the Software and any related Hardware using industry standard scanning software and definitions to confirm it is free of Harmful Code; and

(c)   remedy any Non-Conformity or Harmful Code identified and retest and rescan the Software and any related Hardware.

10.2 Test Data and Estimates. Unless otherwise specified in the Statement of Work, Contractor shall provide to the State all test data and testing scripts used by Contractor for its pre-delivery testing ("**Test Data**"), together with the results Contractor expects to be achieved by processing the Test Data using the Software ("**Test Estimates**," and together with Test Data, "**Contractor's Test Package**").

11. Acceptance Testing.

11.1 Acceptance Testing.

(a)   Unless otherwise specified in the Statement of Work, upon installation of the Software, Acceptance Tests will be conducted as set forth in this **Section 11** to ensure the Software conforms to the requirements of this Contract, including the applicable Specifications and Documentation. The State may, but is not obligated, to perform its own pretest on the Software utilizing Contractor's Test Package. If the State does perform a pretest, and Contractor's Test Package does not successfully pass the Test Data or Test Estimate scripts as described by Contractor, the State, at its discretion, is not obligated to move into the formal Acceptance Tests set forth in this Section. The State may elect to send Contractor's Test Package back to Contractor to correct any problems encountered with the Test Data or Test Estimates. Acceptance of any Hardware purchased by the State from the Contractor or subcontractor pursuant to this Contract will be governed by **Schedule C**, Terms for On-Site Hardware.

(b)   All Acceptance Tests will take place at the designated Site(s) in the Operating Environment described in the Statement of Work, commence on the Business Day following installation of the Software and be conducted diligently for up to thirty (30) Business Days, or such other period as may be set forth in the Statement of Work (the "**Testing Period**"). Acceptance Tests will be conducted by the party responsible as set forth in the Statement of Work or, if the Statement of Work does not specify, the State, provided that:

(i)   for Acceptance Tests conducted by the State, if requested by the State, Contractor will make suitable Contractor Personnel available to observe or participate in such Acceptance Tests; and

(ii)   for Acceptance Tests conducted by Contractor, the State has the right to observe or participate in all or any part of such Acceptance Tests.

Contractor is solely responsible for all costs and expenses related to Contractor's performance of, participation in, and observation of Acceptance Testing.

(c)   Upon delivery and installation of any API, Configuration or Customization to the Software under the Statement of Work, additional Acceptance Tests will be performed on the modified Software as a whole to ensure full operability, integration, and compatibility among all elements of the Software ("**Integration Testing**"). Integration Testing is subject to all procedural and other terms and conditions set forth in **Section 11.1**, **Section 11.3**, and **Section 11.4**.

(d)   The State may suspend Acceptance Tests and the corresponding Testing Period by written notice to Contractor if the State discovers a material Non-Conformity in the tested Software or part or feature of the Software. In such event, Contractor will immediately, and in any case within ten (10) Business Days, correct such Non-Conformity, whereupon the Acceptance Tests and Testing Period will resume for the balance of the Testing Period.

11.2 Notices of Completion, Non-Conformities, and Acceptance. Within fifteen (15) Business Days following the completion of any Acceptance Tests, including any Integration Testing, the party responsible for conducting the tests will prepare and provide to the other party written notice of the completion of the tests. Such notice must include a report describing in reasonable detail the tests conducted and the results of such tests, including any uncorrected Non-Conformity in the tested Software.

(a)   If such notice is provided by either party and identifies any Non-Conformities, the parties' rights, remedies, and obligations will be as set forth in **Section 11.3** and **Section 11.4**.

(b)   If such notice is provided by the State, is signed by the State's Business Owner and Project Manager, and identifies no Non-Conformities, such notice constitutes the State's Acceptance of such Software.

(c)   If such notice is provided by Contractor and identifies no Non-Conformities, the State will have thirty (30) Business Days to use the Software in the Operating Environment and determine, in the exercise of its sole discretion, whether it is satisfied that the Software contains no Non-Conformities, on the completion of which the State will, as appropriate:

(i)   notify Contractor in writing of Non-Conformities the State has observed in the Software and of the State's non-acceptance thereof, whereupon the parties' rights, remedies and obligations will be as set forth in **Section 11.3** and **Section 11.4**; or

(ii)   provide Contractor with a written notice of its Acceptance of such Software, which must be signed by the State's Business Owner and Project Manager.

11.3 Failure of Acceptance Tests. If Acceptance Tests identify any Non-Conformities, Contractor, at Contractor's sole cost and expense, will remedy all such Non-Conformities and re-deliver the Software, in accordance with the requirements set forth in the Statement of Work. Redelivery will occur as promptly

as commercially possible and, in any case, within thirty (30) Business Days following, as applicable, Contractor's:

(a)   completion of such Acceptance Tests, in the case of Acceptance Tests conducted by Contractor; or

(b)   receipt of the State's notice under **Section 11.1(a)** or **Section 11.2(c)(i)**, identifying any Non-Conformities.

11.4 Repeated Failure of Acceptance Tests. If Acceptance Tests identify any Non-Conformity in the Software after a second or subsequent delivery of the Software, or Contractor fails to re-deliver the Software on a timely basis, the State may, in its sole discretion, by written notice to Contractor:

(a)   continue the process set forth in this **Section 11**;

(b)   accept the Software as a nonconforming deliverable, in which case the Fees for such Software will be reduced equitably to reflect the value of the Software as received relative to the value of the Software had it conformed; or

(c)   deem the failure to be a non-curable material breach of this Contract and the Statement of Work and terminate this Contract for cause in accordance with **Section 22.1**.

11.5 Acceptance. Acceptance ("**Acceptance**") of the Software (subject, where applicable, to the State's right to Integration Testing) will occur on the date that is the earliest of the State's delivery of a notice accepting the Software under **Section 11.2(b)**, or **Section 11.2(c)(ii)**.

12. Training. Contractor shall provide, at no additional charge, training on all uses of the Software permitted hereunder in accordance with the times, locations and other terms set forth in the Statement of Work. Upon the State's request, Contractor shall timely provide training for additional Authorized Users or other additional training on all uses of the Software for which the State requests such training, at such reasonable times and locations and pursuant to such rates and other terms as are set forth in the Pricing Schedule.

13. Maintenance Releases; New Versions

13.1 Maintenance Releases. Provided that the State is current on its Support Services Fees, during the Term, Contractor shall provide the State, at no additional charge, with all Maintenance Releases, each of which will constitute Software and be subject to the terms and conditions of this Contract.

13.2 New Versions. Provided that the State is current on its Support Services Fees, during the Term, Contractor shall provide the State, at no additional charge, with all New Versions, each of which will constitute Software and be subject to the terms and conditions of this Contract.

13.3 Installation. The State has no obligation to install or use any Maintenance Release or New Versions. If the State wishes to install any Maintenance Release or New Version, the State shall have the right to have such Maintenance Release or New Version installed, in the State's discretion, by Contractor or other authorized party as set forth in the Statement of Work. Contractor shall provide the State, at no additional charge, adequate Documentation for installation of the Maintenance Release or New Version, which has been developed and tested by Contractor and Acceptance Tested by the State. The State's decision not to install or implement a Maintenance Release or New Version of the Software will not affect its right to receive Support Services throughout the Term of this Contract.

14. Source Code Escrow

14.1 <u>Escrow Contract</u>. The parties may enter into a separate intellectual property escrow agreement. Such escrow agreement will govern all aspects of Source Code escrow and release.

15. Fees

15.1 <u>License Fee</u>. In consideration of, and as payment in full for, the rights and license to use the Software and Documentation as provided in this Contract and the License Agreement, the State shall pay to Contractor the license fees (the "**License Fee**") set forth on the Pricing Schedule, subject to and in accordance with the terms and conditions of this Contract and the License Agreement, including the applicable timetable and other provisions of the Statement of Work and this **Section 15**.

15.2 <u>Implementation Fees</u>. In consideration of, and as payment in full for, Contractor's provision of implementation services as provided in this Contract and the Statement of Work, the State shall pay to Contractor the implementation fees (the "**Implementation Fees**") set forth on the Pricing Schedule, subject to and in accordance with the terms and conditions of this Contract, including the applicable timetable and other provisions of the Statement of Work and this **Section 15**.

15.3 <u>Support Service Fees</u>. In consideration of Contractor providing the Support Services as required under the applicable Statement of Work the State shall pay to Contractor the Support Services fees (the "**Support Service Fees**") set forth in the Pricing Schedule, subject to and in accordance with the terms and conditions of this Contract.

15.4 <u>Firm Pricing/Fee Changes</u>. All Pricing set forth in this Contract is firm and will not be increased, except as otherwise expressly provided in this **Section 15.4**.

(a) The License Fee will not be increased at any time except for the addition of additional licenses, the fees for which licenses will also remain firm in accordance with the Pricing set forth in the Pricing Schedule.

16. Invoices and Payment.

16.1 <u>Invoices</u>. Contractor will invoice the State for Fees in accordance with the requirements set forth in the Statement of Work, including any requirements that condition the rendering of invoices and the payment of Fees upon the successful completion of Milestones. Contractor must submit each invoice in both hard copy and electronic format, via such delivery means and to such address as are specified by the State in the Statement of Work. Each separate invoice must:

(a) clearly identify the Contract and purchase order number to which it relates, in such manner as is required by the State;

(b) list each Fee item separately;

(c) include sufficient detail for each line item to enable the State to satisfy its accounting and charge-back requirements;

(d) for Fees determined on a time and materials basis, report details regarding the number of hours performed during the billing period, the skill or labor category for such Contractor Personnel and the applicable hourly billing rates;

(e)   include such other information as may be required by the State as set forth in the Statement of Work; and

(f)   Itemized invoices must be submitted to DTMB-Accounts-Payable@michigan.gov.

16.2   Payment. Invoices are due and payable by the State, in accordance with the State's standard payment procedures as specified in 1984 Public Act no. 279, MCL 17.51, et seq., within forty-five (45) calendar days after receipt, provided the State determines that the invoice was properly rendered. The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at http://www.michigan.gov/SIGMAVSS to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment

16.3   Taxes. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services or Deliverables purchased under this Contract are for the State's exclusive use. Notwithstanding the foregoing, all Fees are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

16.4   Payment Disputes. The State may withhold from payment any and all payments and amounts the State disputes in good faith, pending resolution of such dispute, provided that the State:

(a)   timely renders all payments and amounts that are not in dispute;

(b)   notifies Contractor of the dispute prior to the due date for payment, specifying in such notice:

(i)   the amount in dispute; and

(ii)   the reason for the dispute set out in sufficient detail to facilitate investigation by Contractor and resolution by the parties;

(c)   works with Contractor in good faith to resolve the dispute promptly; and

(d)   promptly pays any amount determined to be payable by resolution of the dispute.

Contractor shall not withhold any Services or fail to perform any obligation hereunder by reason of the State's good faith withholding of any payment or amount in accordance with this **Section 16.4** or any dispute arising therefrom.

16.5   Right of Setoff. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

17. Intellectual Property Rights

17.1   Ownership Rights in Software

(a)   Subject to the rights and licenses granted by Contractor in this Contract and the License Agreement, and the provisions of **Section 17.1(b)**:

(i) Contractor reserves and retains its entire right, title and interest in and to all Intellectual Property Rights arising out of or relating to the Software; and

(ii) none of the State or Authorized Users acquire any ownership of Intellectual Property Rights in or to the Software or Documentation as a result of this Contract.

(b) As between the State, on the one hand, and Contractor, on the other hand, the State has, reserves and retains, sole and exclusive ownership of all right, title and interest in and to User Data, including all Intellectual Property Rights arising therefrom or relating thereto.

17.2 <u>Rights in Open-Source Components</u>. Ownership of all Intellectual Property Rights in Open-Source Components shall remain with the respective owners thereof, subject to the State's rights under the applicable Open-Source Licenses.

17.3 The State is and will be the sole and exclusive owner of all right, title, and interest in and to all API and Work Product developed exclusively for the State under this Contract, including all Intellectual Property Rights. In furtherance of the foregoing:

(a) Contractor will create all API and Work Product as work made for hire as defined in Section 101 of the Copyright Act of 1976; and

(b) to the extent any API, Work Product, or Intellectual Property Rights do not qualify as, or otherwise fails to be, work made for hire, Contractor hereby:

(i) assigns, transfers, and otherwise conveys to the State, irrevocably and in perpetuity, throughout the universe, all right, title, and interest in and to such API or Work Product, including all Intellectual Property Rights; and

(ii) irrevocably waives any and all claims Contractor may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of *droit moral* with respect to the API or Work Product.

18. State Data.

18.1 <u>Ownership</u>. The State's data ("**State Data**"), which will be treated by Contractor as Confidential Information, includes: (a) User Data; and (b) any other data collected, used, processed, stored, or generated by the State in connection with the Services, including but not limited to (i) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Services, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and (ii) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Services, which is defined under the Health Insurance Portability and Accountability Act ("**HIPAA**") and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This **Section** 18.1 survives termination or expiration of this Contract.

18.2 <u>Contractor Use of State Data</u>. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate,

and display State Data only to the extent necessary in the provision of the Services. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This **Section 18.2** survives termination or expiration of this Contract.

18.3 <u>Loss or Compromise of Data</u>. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) with approval and assistance from the State, notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twenty-four (24) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) pay for any costs associated with the occurrence, including but not limited to any costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution; (g) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (h) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and (i) provide to the State a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, not be tangentially used for any solicitation purposes, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. The State will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification to any other party, including but not limited to public media outlets, must be reviewed and approved by the State in writing prior to its dissemination. The parties agree that any damages relating to a breach of this **Section 19.3** are to be considered direct damages and not consequential damages. This section survives termination or expiration of this Contract. This Section survives termination or expiration of this Contract.

18.4 State's Governance, Risk and Compliance (GRC) platform. Contractor is required to assist the State with its security accreditation process through the development, completion and ongoing updating of a system security plan using the State's automated GRC platform, and implement any required safeguards or remediate any security vulnerabilities as identified by the results of the security accreditation process.

19. Confidential Information. Each party acknowledges that it may be exposed to or acquire communication or data of the other party that is confidential in nature and is not intended to be disclosed to third parties. This **Section 19** survives termination or expiration of this Contract.

19.1 Meaning of Confidential Information. The term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was or is: (a) in the possession of the State and subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). Notwithstanding the above, in all cases and for all matters, State Data is deemed to be Confidential Information.

19.2 Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to the Contractor's subcontractor is permissible where: (a) the subcontractor is a Permitted Subcontractor; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Permitted Subcontractor's responsibilities; and (c) Contractor obligates the Permitted Subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any of the Contractor's Representatives may be required to execute a separate agreement to be bound by the provisions of this **Section 19.2**.

19.3 Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract. Each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

19.4 Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of

the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.

19.5 <u>Surrender of Confidential Information upon Termination</u>. Upon termination or expiration of this Contract or a Statement of Work, in whole or in part, each party must, within five (5) Business Days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control. If Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and certify the same in writing within five (5) Business Days from the date of termination to the other party.

20. HIPAA Compliance. To the extent applicable, the State and Contractor must comply with all obligations under HIPAA and its accompanying regulations, including but not limited to entering into a business associate agreement, if reasonably necessary to keep the State and Contractor in compliance with HIPAA.

21. Accessibility Requirements.

a)   All Software provided by Contractor under this Contract, including associated content and documentation, must conform to WCAG 2.0 Level AA. Contractor must provide a description of conformance with WCAG 2.0 Level AA specifications by providing a completed PAT for each product provided under the Contract. At a minimum, Contractor must comply with the WCAG 2.0 Level AA conformance claims it made to the State, including the level of conformance provided in any PAT. Throughout the Term of the Contract, Contractor must:

   i)   maintain compliance with WCAG 2.0 Level AA and meet or exceed the level of conformance provided in its written materials, including the level of conformance provided in each PAT;

   ii)   comply with plans and timelines approved by the State to achieve conformance in the event of any deficiencies;

   iii) ensure that no Maintenance Release, New Version, update or patch, when properly installed in accordance with this Contract, will have any adverse effect on the conformance of Contractor's Software to WCAG 2.0 Level AA;

   iv) promptly respond to and resolve any complaint the State receives regarding accessibility of Contractor's Software;

   v)   upon the State's written request, provide evidence of compliance with this Section by delivering to the State Contractor's most current PAT for each product provided under the Contract; and

   vi) participate in the State of Michigan Digital Standards Review described below.

b)   <u>State of Michigan Digital Standards Review.</u> Contractor must assist the State, at no additional cost, with development, completion, and on-going maintenance of an accessibility plan, which requires Contractor, upon request from the State, to submit evidence to the State to validate Contractor's accessibility and compliance with WCAG 2.0 Level AA. Prior to the solution going-live and thereafter on an annual basis, or as otherwise required by the State, re-assessment of accessibility may be required. At no additional cost, Contractor must remediate all issues identified

from any assessment of accessibility pursuant to plans and timelines that are approved in writing by the State.

   c)   Warranty. Contractor warrants that all WCAG 2.0 Level AA conformance claims made by Contractor pursuant to this Contract, including all information provided in any PAT Contractor provides to the State, are true and correct. If the State determines such conformance claims provided by the Contractor represent a higher level of conformance than what is actually provided to the State, Contractor will, at its sole cost and expense, promptly remediate its Software to align with Contractor's stated WCAG 2.0 Level AA conformance claims in accordance with plans and timelines that are approved in writing by the State. If Contractor is unable to resolve such issues in a manner acceptable to the State, in addition to all other remedies available to the State, the State may terminate this Contract for cause under **Section 22.1**.

   d)   Contractor must, without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State arising out of its failure to comply with the foregoing accessibility standards

   e)   Failure to comply with the requirements in this **Section 21** shall constitute a material breach of this Contract.

22. Termination, Expiration, Transition. The State may terminate this Contract, the Support Services, or any Statement of Work, in accordance with the following:

   22.1 Termination for Cause. In addition to any right of termination set forth elsewhere in this Contract:

   (a)   The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (i) endangers the value, integrity, or security of State Systems, State Data, or the State's facilities or personnel; (ii) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; or (iii) breaches any of its material duties or obligations under this Contract. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

   (b)   If the State terminates this Contract under this **Section 22.1**, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of this Contract, the termination will be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in **Section 22.2**.

   (c)   The State will only pay for amounts due to Contractor for Services accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. Contractor must promptly reimburse to the State any Fees prepaid by the State prorated to the date of such termination, including any prepaid Support Services Fees. Further, Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Services from other sources.

22.2 Termination for Convenience. The State may immediately terminate this Contract in whole or in part, without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance immediately, or (b) continue to perform in accordance with **Section 22.3**. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities to the extent the funds are available.

22.3 Transition Responsibilities. Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days; the "**Transition Period**"), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract to continue without interruption or adverse effect, and to facilitate the orderly transfer of the Services to the State or its designees. Such transition assistance may include but is not limited to: (a) continuing to perform the Services at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Services to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all State Data; and (d) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, the "**Transition Responsibilities**"). The Term of this Contract is automatically extended through the end of the Transition Period.

22.4 Survival. This **Section 22** survives termination or expiration of this Contract.

23. Stop Work Order. The State may, at any time, order the Services of Contractor fully or partially stopped for its own convenience for up to ninety (90) calendar days at no additional cost to the State. The State will provide Contractor a written notice detailing such suspension (a "**Stop Work Order**"). Contractor must comply with the Stop Work Order upon receipt. Within 90 days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate this Contract. The State will not pay for any Services, Contractor's lost profits, or any additional compensation during a stop work period.

24. Contractor Representations and Warranties.

24.1 Authority. Contractor represents and warrants to the State that:

(a)   It is duly organized, validly existing, and in good standing as a corporation or other entity as represented under this Contract under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;

(b)   It has the full right, power, and authority to enter into this Contract, to grant the rights and licenses granted under this Contract, and to perform its contractual obligations;

(c)   The execution of this Contract by its Representative has been duly authorized by all necessary organizational action; and

(d)   When executed and delivered by Contractor, this Contract will constitute the legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with its terms.

24.2 ITN Response. Contractor represents and warrants to the State that:

(a)   The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other Bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other Bidder to the RFP; and no attempt was made by Contractor to induce any other Person to submit or not submit a proposal for the purpose of restricting competition;

(b)   All written information furnished to the State by or for Contractor in connection with this Contract, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading;

(c)   Contractor is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of the contract; and

(d)   If any of the certifications, representations, or disclosures made in Contractor's Bid Response change after contract award, the Contractor is required to report those changes immediately to the Contract Administrator.

24.3 Software Representations and Warranties. Contractor further represents and warrants to the State that:

(a)   it is the legal and beneficial owner of the entire right, title and interest in and to the Software, including all Intellectual Property Rights relating thereto;

(b)   it has, and throughout the license term, will retain the unconditional and irrevocable right, power and authority to grant and perform the license hereunder;

(c)   the Software, and the State's use thereof, is and throughout the license term will be free and clear of all encumbrances, liens and security interests of any kind;

(d)   neither its grant of the license, nor its performance under this Contract does or to its knowledge will at any time:

(i)   conflict with or violate any applicable Law;

(ii)   require the consent, approval or authorization of any governmental or regulatory authority or other third party; or

(iii)   require the provision of any payment or other consideration to any third party;

(e)   when used by the State or any Authorized User in accordance with this Contract and the Documentation, the Software or Documentation as delivered or installed by Contractor does not or will not:

(i)   infringe, misappropriate or otherwise violate any Intellectual Property Right or other right of any third party; or

(ii)   fail to comply with any applicable Law;

(f)   as provided by Contractor, the Software does not or will not at any time during the license term contain any:

      (i)   Harmful Code; or

      (ii)   Open-Source Components or operate in such a way that it is developed or compiled with or linked to any Open-Source Components, other than Approved Open-Source Components specifically described in the Statement of Work.

(g)   all Documentation is and will be complete and accurate in all material respects when provided to the State such that at no time during the license term will the Software have any material undocumented feature; and

(h)   it will perform all Services in a timely, skillful, professional and workmanlike manner in accordance with commercially reasonable industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications, and will devote adequate resources to meet its obligations under this Contract.

(i)   when used in the Operating Environment (or any successor thereto) in accordance with the Documentation, all Software as provided by Contractor, will be fully operable, meet all applicable specifications, and function in all respects, in conformity with this Contract and the Documentation; and

(j)   no Maintenance Release or New Version, when properly installed in accordance with this Contract, will have a material adverse effect on the functionality or operability of the Software.

24.4 Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, CONTRACTOR HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THIS CONTRACT.

25. Indemnification

25.1 General Indemnification. Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any Intellectual Property Right or other right of any Third Party; and (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

25.2 Indemnification Procedure. The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations. The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense, at its own cost and expense, if the State deems necessary. Contractor will not, without the State's prior written consent (not to be unreasonably withheld), settle, compromise, or consent to the

entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. Any litigation activity on behalf of the State or any of its subdivisions, under this **Section 25**, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

25.3 <u>Infringement Remedies</u>.

(a) The remedies set forth in this **Section 25.3** are in addition to, and not in lieu of, all other remedies that may be available to the State under this Contract or otherwise, including the State's right to be indemnified for such actions.

(b) If any Software or any component thereof, other than State Materials, is found to be infringing or if any use of any Software or any component thereof is enjoined, threatened to be enjoined or otherwise the subject of an infringement claim, Contractor must, at Contractor's sole cost and expense:

    (i) procure for the State the right to continue to use such Software or component thereof to the full extent contemplated by this Contract; or

    (ii) modify or replace the materials that infringe or are alleged to infringe ("**Allegedly Infringing Materials**") to make the Software and all of its components non-infringing while providing fully equivalent features and functionality.

(c) If neither of the foregoing is possible notwithstanding Contractor's best efforts, then Contractor may direct the State to cease any use of any materials that have been enjoined or finally adjudicated as infringing, provided that Contractor will:

    (i) refund to the State all amounts paid by the State in respect of such Allegedly Infringing Materials and any other aspects of the Software provided under the Statement of Work for the Allegedly Infringing Materials that the State cannot reasonably use as intended under this Contract; and

    (ii) in any case, at its sole cost and expense, secure the right for the State to continue using the Allegedly Infringing Materials for a transition period of up to six (6) months to allow the State to replace the affected features of the Software without disruption.

(d) If Contractor directs the State to cease using any Software under **subsection (c)**, the State may terminate this Contract for cause under **Section 22.1**.

(e) Contractor will have no liability for any claim of infringement arising solely from:

    (i) Contractor's compliance with any designs, specifications, or instructions of the State; or

    (ii) modification of the Software by the State without the prior knowledge and approval of Contractor;

    unless the claim arose against the Software independently of any of the above specified actions.

26. Liquidated Damages.

26.1 The parties agree that any delay or failure by Contractor to timely perform its obligations in accordance with the Implementation Plan and Milestone Dates agreed to by the parties will interfere with the proper and timely implementation of the Software, to the loss and damage of the State. Further, the State will incur major costs to perform the obligations that would have otherwise been performed by Contractor. The parties understand and agree that any liquidated damages Contractor must pay to the State as a result of such nonperformance are described in the Statement of Work, and that these amounts are reasonable estimates of the State's damages in accordance with applicable Law.

26.2 The parties acknowledge and agree that Contractor could incur liquidated damages for more than one event if Contractor fails to timely perform its obligations by each Milestone Date.

26.3 The assessment of liquidated damages will not constitute a waiver or release of any other remedy the State may have under this Contract for Contractor's breach of this Contract, including without limitation, the State's right to terminate this Contract for cause under **Section 22.1**, and the State will be entitled in its discretion to recover actual damages caused by Contractor's failure to perform its obligations under this Contract. However, the State will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages.

26.4 Amounts due the State as liquidated damages may be set off against any Fees payable to Contractor under this Contract, or the State may bill Contractor as a separate item and Contractor will promptly make payments on such bills.

27. Damages Disclaimers and Limitations.

27.1 The State's Disclaimer of Damages. THE STATE WILL NOT BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES.

27.2 The State's Limitation of Liability. IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT.

28. Records Maintenance, Inspection, Examination, and Audit.

28.1 Right of Audit. The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to this Contract through the Term of this Contract and for four (4) years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Financial Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Financial Audit Period, Contractor must retain the records until all issues are resolved.

28.2 Right of Inspection. Within ten (10) calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Services are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If financial errors are revealed,

the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of this Contract must be paid or refunded within forty-five (45) calendar days.

28.3 Application. This **Section 28** applies to Contractor, any Affiliate, and any Permitted Subcontractor that performs Services in connection with this Contract.

29. Insurance

Required Coverage.

(a) **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by an company with an A.M. Best rating of "A" or better and a financial size of VII or better.

Insurance Type	Additional Requirements
Commercial General Liability Insurance	
Minimal Limits: $1,000,000 Each Occurrence Limit $1,000,000 Personal & Advertising Injury Limit $2,000,000 General Aggregate Limit $2,000,000 Products/Completed Operations Deductible Maximum: $50,000 Each Occurrence	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.
Umbrella or Excess Liability Insurance	
Minimal Limits: $5,000,000 General Aggregate	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds.
Automobile Liability Insurance	
Minimal Limits: $1,000,000 Per Occurrence	
Workers' Compensation Insurance	
Minimal Limits: Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimal Limits: $500,000 Each Accident $500,000 Each Employee by Disease $500,000 Aggregate Disease.	
Privacy and Security Liability (Cyber Liability) Insurance	

Minimal Limits: $1,000,000 Each Occurrence $1,000,000 Annual Aggregate	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.

(b)   If Contractor's policy contains limits higher than the minimum limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits are not intended, and may not be construed, to limit any liability or indemnity of Contractor to any indemnified party or other persons.

(c)   If any of the required policies provide claim-made coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of contract work; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the contract of work; and (c) if coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

(d)   Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or delivery order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

29.2 Non-waiver. This **Section 29** is not intended to and is not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

30. Dispute Resolution.

30.1 Unless otherwise specified in the Statement of Work, the parties will endeavor to resolve any Contract dispute in accordance with **Section 30** (the "**Dispute Resolution Procedure**"). The initiating party will reduce its description of the dispute to writing (including all supporting documentation) and deliver it to the responding party's Project Manager. The responding party's Project Manager must respond in writing within five (5) Business Days. The initiating party has five (5) Business Days to review the response. If after such review resolution cannot be reached, both parties will have an additional five (5) Business Days to negotiate in good faith to resolve the dispute. If the dispute cannot be resolved within a total of fifteen (15) Business Days, the parties must submit the dispute to the parties' Contract Administrators. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

30.2 Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' Contract Administrators, and either Contract Administrator concludes that resolution is unlikely, or fails to respond within fifteen (15) Business Days. The parties are not prohibited from

instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This **Section 30** does not limit the State's right to terminate this Contract.

31. General Provisions

31.1 Force Majeure.

(a)   Force Majeure Events. Subject to **Subsection (b)** below, neither party will be liable or responsible to the other party, or be deemed to have defaulted under or breached this Contract, for any failure or delay in fulfilling or performing any term hereof, when and to the extent such failure or delay is caused by: acts of God, flood, fire or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Contract, national or regional emergency, or any passage of law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition (each of the foregoing, a "**Force Majeure**"), in each case provided that: (a) such event is outside the reasonable control of the affected party; (b) the affected party gives prompt written notice to the other party, stating the period of time the occurrence is expected to continue; (c) the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

(b)   State Performance; Termination. In the event of a Force Majeure Event affecting Contractor's performance under this Contract, the State may suspend its performance hereunder until such time as Contractor resumes performance. The State may terminate this Contract by written notice to Contractor if a Force Majeure Event affecting Contractor's performance hereunder continues substantially uninterrupted for a period of five (5) Business Days or more. Unless the State terminates this Contract pursuant to the preceding sentence, any date specifically designated for Contractor's performance under this Contract will automatically be extended for a period up to the duration of the Force Majeure Event.

31.2 Further Assurances. Each party will, upon the reasonable request of the other party, execute such documents and perform such acts as may be necessary to give full effect to the terms of this Contract.

31.3 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Contract is to be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party has authority to contract for or bind the other party in any manner whatsoever.

31.4 Media Releases. News releases (including promotional literature and commercial advertisements) pertaining to this Contract or project to which it relates must not be made without the prior written approval of the State, and then only in accordance with the explicit written instructions of the State.

31.5 Notices. All notices, requests, consents, claims, demands, waivers and other communications under this Contract must be in writing and addressed to the parties as follows (or as otherwise specified by a party in a notice given in accordance with this **Section 31.5**):

If to Contractor:	Foray Technologies, LLC
	3911 5th Ave, Suite 300, San Diego, CA 92103
	Email: lslaughter@foray.com
	Attention: Lynn Slaughter, Contract Administrator
If to State:	525 W. Allegan, 1st Floor, Lansing, MI 48913
	Email: BarronJ1@michigan.gov
	Attention: Jarrod Barron, IT Category Specialist

Notices sent in accordance with this **Section 31.5** will be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail (with confirmation of transmission), if sent during normal business hours of the recipient, and on the next Business Day, if sent after normal business hours of the recipient; or (d) on the fifth (5th) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

31.6 Headings. The headings in this Contract are for reference only and do not affect the interpretation of this Contract.

31.7 Assignment.   Contractor may not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Contract, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the State's prior written consent. The State has the right to terminate this Contract in its entirety or any Services or Statements of Work hereunder, pursuant to **Section 22.1**, if Contractor delegates or otherwise transfers any of its obligations or performance hereunder, whether voluntarily, involuntarily, by operation of law or otherwise, and no such delegation or other transfer will relieve Contractor of any of such obligations or performance. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Contractor (regardless of whether Contractor is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Contract for which the State's prior written consent is required. Any purported assignment, delegation, or transfer in violation of this **Section 31.7** is void.

31.8 No Third-party Beneficiaries. This Contract is for the sole benefit of the parties and their respective successors and permitted assigns. Nothing herein, express or implied, is intended to or will confer on any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Contract.

31.9 Amendment and Modification; Waiver. No amendment to or modification of this Contract is effective unless it is in writing, identified as an amendment to this Contract and signed by both parties Contract Administrator. Further, certain amendments to this Contract may require State Administrative Board Approval. No waiver by any party of any of the provisions of this Contract will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Contract, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Contract will operate or be construed as a waiver. Nor will any single or partial exercise of any right, remedy, power or privilege under this Contract preclude the exercise of any other right, remedy, power or privilege.

31.10   Severability. If any term or provision of this Contract is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of

this Contract or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto will negotiate in good faith to modify this Contract so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

31.11   Governing Law. This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in the Michigan Court of Claims. Complaints against the State must be initiated in Ingham County, Michigan. Contractor waives any objections, such as lack of personal jurisdiction or forum non conveniens. Contractor must appoint agents in Michigan to receive service of process.

31.12   Equitable Relief. Each party to this Contract acknowledges and agrees that (a) a breach or threatened breach by such party of any of its obligations under this Contract may give rise to irreparable harm to the other party for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by such party of any such obligations, the other party hereto is, in addition to any and all other rights and remedies that may be available to such party at law, at equity or otherwise in respect of such breach, entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy. Each party to this Contract agrees that such party will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this **Section 31.12**.

31.13   Nondiscrimination. Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and Executive Directive 2019-09, Vendor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex (as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of the Contract.

31.14   Unfair Labor Practice. Under MCL 423.324, the State may void any Contract with a Contractor or Permitted Subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.

31.15   Schedules   All Schedules that are referenced herein and attached hereto are hereby incorporated by reference.

31.16   Counterparts. This Contract may be executed in counterparts, each of which will be deemed an original, but all of which together are deemed to be one and the same agreement and will become effective and binding upon the parties as of the Effective Date at such time as all the signatories hereto have signed a counterpart of this Contract. A signed copy of this Contract delivered by facsimile, e-mail or other means of electronic transmission (to which a signed copy is attached) is deemed to have the same legal effect as delivery of an original signed copy of this Contract.

31.17   Effect of Contractor Bankruptcy. All rights and licenses granted by Contractor under this Contract are and will be deemed to be rights and licenses to "intellectual property," and all Software and Deliverables are and will be deemed to be "embodiments" of "intellectual property," for purposes of, and as such terms are used in and interpreted under, Section 365(n) of the United States Bankruptcy Code (the "**Code**"). If Contractor or its estate becomes subject to any bankruptcy or similar proceeding, the State retains and has the right to fully exercise all rights, licenses, elections, and protections under this Contract, the Code and all other applicable bankruptcy, insolvency, and similar Laws with respect to all Software and other Deliverables. Without limiting the generality of the foregoing, Contractor acknowledges and agrees that, if Contractor or its estate shall become subject to any bankruptcy or similar proceeding:

(a)   all rights and licenses granted to the State under this Contract will continue subject to the terms and conditions of this Contract, and will not be affected, even by Contractor's rejection of this Contract; and

(b)   the State will be entitled to a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property comprising or relating to any Software or other Deliverables, and the same, if not already in the State's possession, will be promptly delivered to the State, unless Contractor elects to and does in fact continue to perform all of its obligations under this Contract.

31.18   Compliance with Laws. Contractor and its Representatives must comply with all Laws in connection with this Contract.

31.19   Non-Exclusivity. Nothing contained in this Contract is intended nor is to be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Services from other sources.

31.20   Administrative Fee and Reporting. Contractor must pay an administrative fee of 1% on all payments made to Contractor under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions), MiDEAL members, and other states (including governmental subdivisions and authorized entities). Administrative fee payments must be made online by check or credit card:

State of MI Admin Fees: https://www.thepayplace.com/mi/dtmb/adminfee

State of Mi MiDEAL Fees: https://www.thepayplace.com/mi/dtmb/midealfee

Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales. Reports should be mailed to MiDeal@michigan.gov.

The administrative fee and purchasing activity report are due within 30 calendar days from the last day of each calendar quarter

31.21   Extended Purchasing Program. This contract is extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at www.michigan.gov/mideal.

Upon written agreement between the State and Contractor, this contract may also be extended to: (a) other states (including governmental subdivisions and authorized entities) and (b) State of Michigan employees.

If extended, Contractor must supply all Contract Activities at the established Contract prices and terms. The State reserves the right to impose an administrative fee and negotiate additional discounts based on any increased volume generated by such extensions.

Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis.

31.22   Entire Agreement. This Contract, together with all Schedules, Exhibits, and the Statement of Work which are hereby expressly incorporated, constitutes the sole and entire agreement of the parties to this Contract with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Contract, the Schedules, Exhibits, and the Statement of Work, the following order of precedence governs: (a) first, this Contract, excluding its Exhibits and Schedules, and the Statement of Work; and (b) second, the Statement of Work as of the Effective Date; and (c) third, the Exhibits and Schedules to this Contract as of the Effective Date. NO TERMS ON CONTRACTORS INVOICES, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE SERVICES, OR DOCUMENTATION HEREUNDER WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE OR ANY AUTHORIZED USER FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE AND THE AUTHORIZED USER, EVEN IF ACCESS TO OR USE OF SUCH SERVICE OR DOCUMENTATION REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

SCHEDULE A
STATEMENT OF WORK
Foray ADAMS Implementation

This Schedule identifies the anticipated requirements of this Contract.

1. DEFINITIONS

The following terms have the meanings set forth below. All initial capitalized terms that are not defined below shall have the respective meanings given to them in Section 1 of the Contract Terms and Conditions. "Solution" means the Custom Build Solution that the State is seeking under this Contract.

Term	Definition
AFIS	Automated Fingerprint Identification System
DTMB	Department of Technology, Management, and Budget
MSP	Michigan State Police
MSPAD	Michigan State Police Active Directory
PSP	Policies, Standards and Procedures
SADLC	Secure Application Development Life Cycle
SLA	Service Level Agreement
SOM	State of Michigan
SUITE	State Unified Information Technology Environment
VLAN	Virtual LAN
Defect	A defect is a bug or system defect that effects a requirement(s) listed in the Contract and found during or after development of the proposed solution. The documents which define approved requirements are the signed contract, the approved requirements document and the System Design. Once a defect has been identified, defects are triaged based on their impact to the State's operations.

2. BACKGROUND

The Foray ADAMS system is an on-premise software solution used for the analysis of latent fingerprints submitted by law enforcement agencies to the MSP laboratories. It consists of a combination of servers and software installed on-site at the laboratories that will be used by lab employees using SOM workstations, scanners, and cameras that are deployed in the lab. The current system is several years old and contains components that are no longer supported. An upgrade of the system (both Hardware and software) is required to move to supported software, and to improve productivity and efficiency of latent fingerprint processing by allowing staff at the laboratory to use the ADAMS system from any workstation.

3. PURPOSE

Contractor will provide the following:
1. <u>Server Hardware Installation</u>. New Foray ADAMS servers, UPS, and backup storage are to be installed at the following six (6) MSP laboratories: Bridgeport, Grand Rapids, Grayling, Lansing, Marquette, and Northville.
2. <u>Software Licenses</u>. The following software licenses, which are required for MSP to use the ADAMS system at each of the six laboratories:
   a. Foray licenses
      i. ADAMS Web Server License
      ii. ADAMS Concurrent User Licenses
      iii. ADAMS Digital Evidence Processing Concurrent User License
      iv. AFIS Connect Concurrent User License
      v. Photoshop Filter Pack

b. Third-Party Licenses
   i. Microsoft Windows Server 2019
   ii. Veritas Backup Exec
3. <u>Installation and Integration.</u>
   a. Complete system Hardware and software installation
   b. Complete system integration and testing
   c. Migration of existing ADAMS repository and data from current server or standalone workstation
   d. Transfer of existing ADAMS licenses
4. <u>Project Management and Coordination.</u>
5. <u>Training.</u> Onsite user familiarization training.
6. <u>Ongoing Annual Level 3 Hardware and Software Support Services.</u> Hardware and software support.

4. SPECIFIC STANDARDS

All Contractor services and products provided as a result of this Contract must comply with all applicable State IT policies and standards.

Applicable PSPs include:

1305.00 Enterprise Information Technology Policy
1340.00 Information Technology Information Security
1340.00.130.02 Acceptable Use of Information Technology Standard
1340.00.130.03 Social Media Standard
1345.00 Information Technology Network and Infrastructure
1345.00.01 Network and Telecommunications Local Area Network (LAN) Cabling Standard
1355.00 Project Management Methodology
1360.00 Systems Engineering Methodology
1365.00 IT Product Standards Adoption, Acquisition, Development and Implementation Policy
1340.00.080.01 Identification and Authentication Standard
1340.00.150.01 Risk Assessment Standard
1345.00.02 Network and Telecommunications Infrastructure Facility Standard
1305.00.01 IT Policy Administration Standard
1305.00.02 Technical Policy and Product Exception Standard
1340.00.020.01 Access Control Standard
1340.00.020.01.01 Remote Vendor Access Procedure
1340.00.020.03 Authorization Prerequisite for Access to Protected Data Resources Standard
1340.00.020.05 Use of Privately-Owned Portable Devices Standard
1340.00.020.06 Client Firewall Standard
1340.00.030.01 Security Awareness and Training Standard
1340.00.040.01 Audit and Accountability Standard
1340.00.050.01 Security Assessment and Authorization Standard
1340.00.060.01 Configuration Management Standard
1340.00.060.02 Database Security Standard
1340.00.060.05 IT Resource and Internet of Things (IOT) Security Operational Standard
1340.00.070.01 Contingency Planning Standard
1340.00.070.02 Information Technology Continuity of Business Planning Standard
1340.00.080.03 Identity, Credentialing, and Access Management Standard
1340.00.080.04 Authentication Requirements for Access to IT Resources and Applications Standard
1340.00.090.01 Incident Response Standard
1340.00.090.02 Enterprise Incident and Problem Management Control Process Standard
1340.00.100.01 Maintenance Standard
1340.00.110.01 Media Protection Standard
1340.00.110.02 Ownership and Transfer of State of Michigan Information Standard
1340.00.110.03 Storage of Sensitive Information on Mobile Devices and Portable Media Standard

1345.00.50.07 Server Logging Procedure
1345.00.50.08 Server Patch Management Procedure
1345.00.50.10 Standard Backup Strategy Procedure
1345.00.50.11 Standard Default Restore Procedure
1345.00.51 DTMB Server Virtualization Standard
1345.00.80.01 Enterprise Architecture Solution Assessment (EASA) Procedure
1345.00.82 Enterprise Technologies Lifecycle Standard - Roadmaps
1360.00.07 Interactive Voice Response (IVR) Systems Standard

Acceptable Use Policy
To the extent that Contractor has access to the State's computer system, Contractor must comply with the State's Acceptable Use Policy, see https://www.michigan.gov/documents/dtmb/1340.00.01_Acceptable_Use_of_Information_Technology_Standard_458958_7.pdf. . All Contractor Personnel will be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State's system. The State reserves the right to terminate Contractor's access to the State's system if a violation occurs.

Look and Feel / Digital Standards
All software items provided by the Contractor must adhere to the State of Michigan Application/Site standards which can be found at www.michigan.gov/standards.

ADA Compliance
The State is required to comply with the Americans with Disabilities Act of 1990 (ADA), and has adopted a formal policy regarding accessibility requirements for websites and software applications. The State is requiring the Contractor's Solution, where relevant, to level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.0. Contractor may consider, where relevant, the W3C's Guidance on Applying WCAG 2.0 to Non-Web Information and Communications Technologies (WCAG2ICT) for non-web software and content. The State may require the Contractor complete a Voluntary Product Accessibility Template for WCAG 2.0 (WCAG 2.0 VPAT) or other comparable document for the Solution.
http://www.michigan.gov/documents/dmb/1650.00_209567_7.pdf?20151026134621

5. USER TYPE AND CAPACITY
Contractor must be able to meet the expected number of concurrent Users.

Type of User	Access Type	Number of Users	Number of Concurrent Users
State Employees	Admin Access	25	25

6. ACCESS CONTROL AND AUDIT
The Foray equipment hosted at the laboratories will be joined to the MSPAD domain but will be isolated from the rest of the MSP network via a separate VLAN. MSP users will use their MSPAD accounts to log onto the Foray ADAMS system.

Access Log Data
User access, and audit log data will be stored and purged in compliance with DTMB, MSP and any other applicable regulation(s).

7. DATA RETENTION
The Foray ADAMS system will comply to the data retentions schedules as specified by MSP.

8. SECURITY

Security Accreditation Process
Contractor is required to complete the State Security Accreditation Process for the solution, which means participating in a framework-based, questionnaire-driven security assessment using the State's Governance, Risk, and Compliance tool. State will record the results of the assessment in the Governance, Risk, and Compliance tool as well as any needed Plan of Action and Milestones (POAM) to remediate any vulnerabilities that are discovered.

Application Security Scanning
For Contractor provided applications, Contractor, at its sole expense, must provide resources to complete the scanning and the analysis, remediation and validation of vulnerabilities identified by the scan as required by the State Secure Web Application Standards.

Application scanning and remediation must include the following types of scans and activities:
1. Dynamic Application Security Testing (DAST) – Scanning interactive application for vulnerabilities, analysis, remediation, and validation.
    Contractor must either a) grant the State the right to dynamically scan the application code to a deployed version of the solution; or b) in lieu of the State performing a scan, Contractor must provide the State a vulnerabilities assessment after Contractor has used a State approved application scanning tool. These scans must be completed and provided to the State on a regular basis (dates to be provided by the State) and for each major release. A major software release is one that requires an update to the software application's Authority to Operate, as defined in the State's Governance, Risk, and Compliance tool. Scans should be completed in a non-production environment with verifiable matching source code and supporting infrastructure configurations.

Infrastructure Security Scanning
State will scan server Hardware and operating system using Tenable scanning tool and will report any vulnerabilities that are discovered to Contractor. If Contractor suspects that Tenable scanning adversely affects operation or performance of the Contractor solution, Contractor shall call the DTMB Client Service Center at (800) 241-9700 to enter a ticket to report the suspected adverse impact so that it can be investigated.

Vulnerability Remediation
When vulnerabilities are discovered in the Security Accreditation process, Application Security Scanning, or Infrastructure Security Scanning, the State will classify them according to the Common Vulnerability Scoring System (CVSS).

CVSS Ratings (in CLASSIFYING VULNERABILITIES)

Severity	CVSS Rating	Description
Critical	9.0-10	Immediate Threat
High	7.0-8.9	Severe Security Threat
Moderate	4.0-6.9	Moderate Vulnerability
Low	0-3.9	Low threat

Contractor shall remediate Critical, High, and Moderate vulnerabilities or work with the State to remediate such vulnerabilities, consistent with the State's Risk Assessment Standard 1340.00.150.01 https://stateofmichigan.sharepoint.com/teams/insidedtmb/work_/policies/IT%20Policies/1340.00.150.01%20Risk%20Assessment%20Standard.pdf, Contractor and State acknowledge that some infrastructure vulnerabilities (e.g., server operating system patches) will be remediated by Contractor, and some infrastructure vulnerabilities (e.g., network configurations) will be remediated by the State. Contractor and State agree to develop specific action plans for each vulnerability.

Operating System and Application vulnerabilities are required to be remediated within timeframes specified in the State's Risk Assessment Standard 1340.00.150.01 which are:

Vulnerability Remediation Timeframes in Days

	Operating Systems / Infrastructure Devices				Applications			
CVSS	9.0-10	7.0-8.9	4.0-6.9	0-3.9	9.0-10	7.0-8.9	4.0-6.9	0-3.9
Action Plan Timeframe	7	7	15	30	7	30	30	Data Owner Risk Decision
Resolution Timeframe	15	30	60	90	30	60	90	Data Owner Risk Decision

Security Monitoring

Contractor shall allow State to deploy security monitoring software on servers, such as FireEye. If Contractor suspects that security monitoring software adversely affects operation or performance of the Contractor solution, Contractor shall call the DTMB Client Service Center at (800) 241-9700 to enter a ticket to report the suspected adverse impact so that it can be investigated.

In adherence to the PSPs indicated above, Contractor will comply with the following:
- The fingerprint image and data used by the Foray ADAMS system will be encrypted in transit and at rest on the server using FIPS 140-2 certified modules with AES 256 bit or higher encryption.
- The Foray ADAMS system must support a FIPS/NIST compliant multi-factor authentication for all privileged/administrative access.
- Remote users must use a DTMB approved multi-factor authentication tool to gain remote access to the Foray ADAMS server.

9. END USER OPERATING ENVIRONMENT

If intended to run on a DTMB supported workstation, the software must function properly on the latest DTMB supported version, and patch level, of the workstation operating system. It must also function properly in combination with all DTMB support software (Anti-virus, scan, security programs, etc.) installed and supported by DTMB on the workstation. Contractor must support the current and future State standard workstation environment, including browser compatibility, at no additional cost to MSP.

10. INSTALLATION APPROACH

Contractor will deploy the Foray ADAMS system first in Lansing, Grand Rapids, and Northville to replace the existing systems in those laboratories. Contractor will then deploy the Foray ADAMS system in Bridgeport, Grayling, and Marquette laboratories.

11. INTEGRATION

The new Foray ADAMS system must support integration with the MSP ABIS system (provided by Idemia) in the same manner of the current system, using the shared drive. The Contractor will only implement integrations that have been specifically approved by MSP and DTMB. Integrations that have not been expressly approved by MSP and DTMB are not allowed.

12. DATA MIGRATION

The Contractor will stipulate the approach used to migrate and convert data from the existing Foray ADAMS systems to the new. The Contractor shall complete the following data migrations:
- Migration of all existing Foray ADAMS repository data, and all stand-alone workstation data from the old servers and workstations to the new servers.
- All existing Foray ADAMS licenses, or license keys, from the old equipment to the new.

Data migration is the sole responsibility of the Contractor, however MSP and DTMB are available to assist in this effort. Any request for assistance from MSP or DTMB must be done in writing and with at least 2 weeks advanced notice. This includes any temporary or permanent firewall rule requests.

13. TESTING SERVICES AND ACCEPTANCE
Once the Contractor has completed integration and testing, user acceptance testing (UAT) by MSP SMEs will be performed. Acceptance of the system is dependent upon successful UAT testing as stipulated and performed by MSP. The Contractor shall be available to assist MSP during UAT.

14. TRAINING SERVICES

Employee Training on how to use the system.
The Contractor will provide on-site user familiarization training at each of the six (6) laboratories for all available licensed users. Instructor fees and travel will be provided by the Contractor at no additional cost. The State will not pay travel expenses.

Training Plan Overview
The Contractor will provide initial training for all available licensed users at the six (6) laboratories.

15. HOSTING
A Foray ADAMS server will be hosted on-site at each of the six (6) the laboratories and will be isolated from the rest of the MSP network using a VLAN. All connections to or from the Foray ADAMS system will be routed through a firewall at the lab which will require all connections to be explicitly configured.

Backups and Disaster Recovery
The Foray ADAMS server at each lab will be plugged into an uninterruptable power supply (UPS) to allow the system to work for a few minutes in the event of a power loss. The images and data stored on each server will be backed up to a local 40 TB NAS backup device for rapid recovery of lost files. The Contractor will work with DTMB to implement an off-site remote backup of images and data, on a geographically separated SOM server, in the SOM Azure hosting environment. In the event of a disaster or emergency, Contractor will work with DTMB and MSP to restore Hardware, software, system configuration, and data to allow business continuity in a mutually agreed upon timeframe.

16. SUPPORT AND OPERATIONS

Support-Hours
The State requires Contractor to provide support hours as 8 a.m. to 5 p.m. Eastern, Monday thru Friday. Remote access, via a SOM issued VPN/Token, will be provided to the Contractor by MSP.

Basic Elements

Contractor's application support processes are built around the following assumptions:

Support Request Classification	Definition	Response Time	Resolution Time
Critical Service Error	• Issue affecting entire system or single critical production function; • System down, non-functioning or operating in materially degraded state; • Data integrity at risk; or • Material financial impact.	Acknowledge within **30 minutes** when submitted through the Foray Support Ticketing System. Service Requests must be submitted via email to Support@Foray.com.	Foray will investigate the critical error and present a plan to MSP to resolve the error as soon as feasible, no later than **2 Business Days** from Contractors receipt of the Support Request. The plan shall include an estimated time frame for completion that is agreeable to the State or, where applicable, the State's written acceptance of a Critical Service Error work-around.
High Service Error	• A Critical Service Error for which the State has received, within the Resolution time for Critical Service Errors, a work-around that the State has accepted in writing; or • Primary component failure that materially impairs its performance; • Data entry or access is materially impaired on a limited basis; or • Performance issues of severe nature impacting critical processes.	Acknowledge within **30 minutes** when submitted through the Foray Support ticketing system. Service request must be submitted via email to support@foray.com.	Foray will investigate the error and present a plan to MSP to resolve the error as soon as feasible, no later than **3 Business Days** from Contractors receipt of the Support Request. The plan shall include an estimated time frame for completion that is agreeable to the State or, where applicable, the State's written acceptance of a High Service Error work-around.
Medium Service Error	• An isolated or minor Error in the Software that meets any of the following requirements: • does not significantly affect Software functionality; • can or does impair or disable only certain non-essential Software functions; or • does not materially affect the State's use of the Software.	**30 minutes** when submitted through the Foray Support ticketing system. Service request must be submitted via email to support@foray.com	Foray will investigate the error and present a plan to MSP to resolve the error as soon as feasible, but no later than **5 Business Days** after Contractor's receipt of the Support Request. The plan shall include an estimated time frame for completion that is agreeable to the State or, where applicable, the State's written acceptance of a Medium Service Error work-around.

- Contractor will have the ability to access servers and update software on servers remotely.

- Contractor understands that they shall log into each server at least every 30-days to prevent server passwords from expiring. If passwords expire, Contractor shall contact the DTMB Client Service Center at 517-241-9700 to reactivate. Contractor understands administrative user accounts on each server will be deleted if not used within 90-days.
- Contractor will assign experienced and knowledgeable staff to the support operations, including primary, secondary, and tertiary staff assignments.

Roles and Responsibilities

Issues reported to Contractor will be entered into Contractor's support ticketing system. The following table indicates responsibilities of each organizational unit to report issues.

Organization Unit	Responsibilities	Tasks
Client User	• Initiate support ticket request • Request Support ticket closed	• Logs description of issue in the subject line of email and description and attachment of any relevant documentation • Assist in priority determination • Test and acceptance of solution
Contractor's Support Staff	• Ticket analysis, correction, and resolution • Close ticket and notification of closed ticket	• Analyze the root cause of the issue • Design solution • Apply changes and patches • Perform testing

17. DOCUMENTATION

Contractor must provide all user, operating, and technical manuals, and any other instructions, specifications, documents or materials, in any form or media, that describe the functionality, installation, testing, operation, use, maintenance, support, technical or other components, features or requirements of the Software. The Contractor's user documentation must provide detailed information about all software features and functionality, enabling the State to resolve common questions and issues prior to initiating formal support requests.

18. TRANSITION SERVICES

Upon termination or expiration of the agreement, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the agreement to continue without interruption or adverse effect, and to facilitate the orderly transfer of the services to the State or its designees. Such transition assistance may include but is not limited to: (a) continuing to perform the services at the established rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable services to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return (in a format specified by the State) to the State all data stored in the solution; and (d) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

19. PRODUCTS AND SERVICES

Section 20.1--Products Purchased
Contractor will provide the new products listed in the following table:

	Lansing	Grand Rapids	Northville	Marquette	Grayling	Bridgeport	Total
A. Server Hardware, UPS, backup Hardware	1	1	1	1	1	1	6
B. ADAMS Web Server License plus Third-Party Software Licenses	-	-	-	1	1	1	3
C. ADAMS Concurrent User License	-	-	1	1	1	1	4
D. ADAMS Digital Evidence Processing Concurrent User License	-	-	-	1	1	1	3
E. AFIS Connect Concurrent User License	-	-	-	1	1	1	3
F. Photoshop Filter Pack	-	-	-	1	1	1	3
G. ADAMS Link[1]	-	-	-	-	-	-	-

[1]MSP is not purchasing ADAMS Link initially, but the price for this software is listed in **Schedule B**, to allow MSP to optionally purchase it later.

Section 20.2--Products Subject to Level 3 Hardware and Software Support and Service Agreement
The following table details the Hardware and software that will be subject to the Level 3 Hardware and Software Support and Service Agreement. The products listed below reflect both the new products purchased in the table above in addition to products that the State has already purchased and licensed from Contractor. The State shall be permitted to move these licenses between sites as needed.

	Lansing	Grand Rapids	Northville	Marquette	Grayling	Bridgeport	Total
A. Server Hardware, UPS, backup Hardware	1	1	1	1	1	1	6
B. ADAMS Web Server License plus Third-Party Software Licenses	1	1	1	1	1	1	6
C. ADAMS Concurrent User License	5	5	5	2	3	5	25
D. ADAMS Digital Evidence Processing Concurrent User License	5	5	4	2	3	5	24
E. AFIS Connect Concurrent User License	5	5	4	2	3	5	24
F. Photoshop Filter Pack	5	5	4	2	3	5	24
G. ADAMS Link[2]	-	-	-	-	-	-	-

[2]MSP is not purchasing ADAMS Link initially, but if MSP elects to purchase ADAMS Link, it will be covered under the Level 3 Hardware and Software Support and Service Agreement at no additional cost to MSP.

Section 20.3—Descriptions and Specifications of Hardware and Software Licenses Listed in Section 20.1 Above.
A. Server Hardware, UPS, Backup Hardware Specifications
Foray Technologies 24TB Repository Server
- Tower Case
  - Redundant Hot-swappable Power Supply

- Rack mountable
- 5U
- 2 Six-Core Server Processors
- 32 GB RAM
- 17" LCD Monitor
- 24 TB Storage
  - 24 TB raw/12 TB RAID/10.8 TB Useable
  - Hot-swappable drives
  - Battery backup module for RAID controller
- DVD Drive
- Dual-port Gigabit Ethernet
- UPS
- Software: Microsoft Windows Server 2019

Foray Technologies Backup to Disk for 40 TB Repository Server
- Capacity: 40 TB raw/36 TB formatted
- Gigabit Ethernet
- Software: Veritas Backup Exec 20 Windows Server software

Software License Descriptions

B. ADAMS Web Server
Core software license for each ADAMS server.

C. ADAMS Concurrent User License
Ability to add images (acquire) and view images.

D. ADAMS Digital Evidence Processing Concurrent User License
Allows third-party software to view and edit images. Ex: Adobe Photoshop

E. AFIS Connect Concurrent User License
Prepares images for submission to one or more AFIS systems. Includes:
- Precise, high resolution, image orientation
- Select one or multiple clips from an image
- Automatically formats clips for destination AFIS system
- Ensures clips adhere to AFIS system's submission requirements
- Enables connection to an unlimited number of AFIS systems
- Creates an unlimited number of profiles. Ex: finger, palm, etc.

F. Photoshop Filter Pack
Increases hits on latent prints and speeds up processing. Includes:
- Chromatic Filter – remove patterns
- Image Calibration Filter – calibrate images for 1-1 printing

G. ADAMS Link
Connects ADAMS to RMS, CAD, LIMS or other third-party system. Includes:
- Verify case number and retrieve other data from a RMC or LIMS during acquisition
- Open ADAMS Web from within another system such as a RMS and take the user to a specific case and view
- Automatically log users in when connecting to ADAMS Web from another system
- View digital evidence from within a RMS or LIMS
- Start a new request from another system such as a LIMS
- Automate the transfer of digital evidence from a third-party system to ADAMS

- Initiate requests in ADAMS from a LIMS
- Publish requests status as they progress
- Integrate ADAMS Web with a Single Sign On (SSO) service

Section 20.4--One-time Implementation and Training Services

I: Project Planning & Initiation
The Foray Project Manager will work directly with the State to verify the scope of work and facilitate on-going communication. Communication will be performed via phone and email on a regularly scheduled basis (and/or as required) during normal business hours.

1. Schedule Initial Project Management Plan Call with the State's Project Manager and Foray's Project Manager to confirm the details of order and project scope of work.
    a. Agree on Project Kick Off Date
2. Establish Points of Contact for various roles and resources as well as any key backup personnel.
3. Initial Project Call with both State and Foray stakeholders (IT, Project Managers, System Admin, Primary Users, etc.) to review project scope of work and functionality. Initial Planning call will:
    a. Confirm State's current set up and standard operating procedures and policies
    b. Confirm State's desired needs
    c. Confirm any required documentation required from State for configuration
    d. Confirm personnel resource requirements and as well as identify any possible risks (delays, etc.) with project implementation
    e. Confirm schedule for Weekly or Biweekly Status Update Calls
4. Develop specific plans, for each of the six (6) MSP laboratories, for:
    a. Installation and Configuration
    b. Data Migration
    c. Foray System Testing and MSP User Acceptance Testing
    d. Training
    e. Go-live event
    f. Decommissioning old Foray Hardware and software

And then at each of the six (6) MSP laboratories:

II: Configuration (Configuration Services are performed remotely)
The Foray Customer Service Engineer will work directly with the State's designated IT resource personnel.

1. Foray IT will confirm remote access capability to each location within the State.
2. Foray IT will confirm access rights and permissions.
3. Foray IT will complete any remaining configuration tasks.
4. Foray IT will perform final system testing
5. State System Admin will perform user system testing
6. The State's Project Manager and System Admin will confirm with Foray Project Manager that all required tasks for the configuration of the solution as designated in the Final PM Plan have been completed and provide sign-off to Foray Project Manager
7. Upon obtaining sign-off and confirmation of Go-Live date, Foray will schedule the User Familiarization training dates with the State

III: Training
Foray will ensure that the designated users are properly trained. Training on application familiarization will include both User On-boarding/Off-boarding Training, and User Familiarization Training, to begin after the completion of installation and configuration, as described below:

1. User On-boarding/Off-boarding Training:
   a. For selected personnel to cover user on-boarding and off-boarding procedures.
2. Onsite User Familiarization Training: Training Session for users to cover familiarization on the proper use and operation of the application components that permit file upload and entry, retrieval, processing, printing, exporting, reports, archiving, etc. at each of the 6 sites.
   a. Training Session for Remote Upload & View Capabilities at each of the 6 sites.

IV: Production/Go-Live
1. Foray Project Manager and the State's Project Manager will complete System Security Plan and achieve Authority to Operate using the State's Security Accreditation Process.
2. Foray Project Manager will address any findings from the State's review of ADA Standards and Look and Feel / Digital Standards.
3. Foray Project Manager and the State's Project Manager will select a date that will not conflict with any Federal or Local holiday to begin entering new data into the Foray ADAMS system.
4. Foray will migrate data from old Foray ADAMS system to the newly installed Foray ADAMS system.
5. MSP and Foray will make final configurations to allow users to access new Foray ADAMS system.
6. MSP and Foray will decommission old Foray Hardware and software.
7. MSP will provide Final Acceptance to confirm that the system is working, data has been successfully migrated, and users are trained.

Section 20.5—Ongoing Annual Level 3 Hardware and Software Support Services
The proposed ADAMS solution is covered under a five-year maintenance and technical support agreement effective immediately upon completion of the installation and training and includes:
1. Unlimited access to the Foray Technologies' Support Desk from 8:00 AM to 5:00 PM Eastern Time, Monday through Friday excluding SOM holidays.
2. Answering questions regarding system functionality or processes.
3. Repairing defects identified during production operations.
4. Resolving production problems resulting from user error that results in data errors.
5. Internet-based remote diagnostics and troubleshooting.
6. Complete parts and labor warranty.
7. On-site dispatch if required.
8. 24/7 on-line maintenance support ticketing and escalation.
9. Monthly patching of server OS with the latest patch release from Microsoft.
10. Patching and updating of Foray software.
11. Patching and updating of any third-party software, including Veritas Backup Exec 20 Windows Server, and any other third-party software deployed in the Foray Servers deployed at the 6 laboratories.
12. Remediation of vulnerabilities found on the servers, following the timeframes documented in SOM policy.

MSP will have the option of purchasing extended maintenance annually after the initial five-year support and maintenance has expired.

20. CONTRACTOR PERSONNEL

Foray Contract Administrator. The individual appointed to (a) administer the terms of this Contract, and (b) approve and execute any Change Notices under this Contract.

Contractor Personnel	
Name	Lynn Slaughter
Address	3911 5th Ave, Suite 300
Phone	San Diego, CA 92103
Email	(619) 858-1360, ext 517
	lslaughter@foray.com

Foray Project Manager. The individual who will serve as the primary contact with regard to services who will have the authority to act on behalf of the Contractor in matters pertaining to the implementation services.

Contractor Personnel	
Name	Lynn Slaughter
Address	3911 5th Ave, Suite 300
Phone	San Diego, CA 92103
Email	(619) 858-1360, ext 517
	lslaughter@foray.com

Foray Customer Service Engineer. The individual who will serve as the primary contact with regard to programming who will have the authority to act on behalf of the Contractor in matters pertaining to the implementation services.

Contractor Personnel	
Name	Rob Burkindine
Address	3911 5th Ave, Suite 300
Phone	San Diego, CA 92103
Email	(619) 858-1360, ext 515
	rburkindine@foray.com

Foray Security Officer. The individual to respond to State inquiries regarding the security of the Contractor's systems. This person must have sufficient knowledge of the security of the Contractor Systems and the authority to act on behalf of Contractor in matters pertaining thereto.

Contractor Personnel	
Name	Rob Burkindine
Address	3911 5th Ave, Suite 300
Phone	San Diego, CA 92103
Email	(619) 858-1360, ext 515
	rburkindine@foray.com

Contractor Roles and Responsibilities

Team Roles and Responsibilities

Role	Responsibility	Participation Commitment
Foray Contract Administrator	The Foray Contract Administrator will be the primary point of contact for contract-related communications. He will be responsible for: • Facilitating, documenting and monitoring Contractor responsibilities and activities in the fulfillment of Contract requirements. • Providing executive oversight to the Team.	• Must attend all meetings related to contract negotiation

Foray Project Manager	The Foray Project Manager shall interact with designated personnel from the State to ensure a smooth transition to the new system. The project manager will coordinate all activities of the Contractor personnel assigned to the project and create all reports required by State. The Contractor Project Manager's responsibilities include at a minimum: • Manage all defined Contractor responsibilities in the scope of Services • Develop the Project Management Plan and schedule, updating as needed • Serve as the point person for all project issues • Coordinate and oversee the day-to-day project activities • Escalate project issues, project risks, and other concerns • Review all project deliverables and provide feedback • Proactively propose/suggest options and alternatives for consideration • Use change control procedures • Prepare project documents and materials • Manage the planning process • Manage overall project schedule and drive multiple releases for the contract • Own and assign action items • Report project status to DTMB PM and MSP PO • Risk assessment and mitigation • Find and remove roadblocks • Facilitate communication between roles for every aspect of the project • Keep release/project information consolidated, organized and up to date • Request State facilities, as needed • Coordinate the State resources necessary for the project • Facilitate communication between different State departments/divisions • Resolve project issues • Escalate outstanding/high priority issues • Document and archive all important project decisions • Arrange, schedule and facilitate State staff attendance at all project meetings	• Must attend Project Leadership meetings • Must attend project oversight meetings
Foray Security Officer	The Foray Security Officer will be responsible for the overall security of system data. The Foray Security Officer will: • Work with the team to ensure all architecture and designs adhere to data security best practices • Ensure all DTMB and SUITE security assessments and documentation are completed • Perform data security risk assessments and develop mitigation strategies • Assist with all necessary scans and penetration testing to ensure data security	• Attend technical discussions and design sessions • Participate in security accreditation

Foray Customer Service Engineer	The Foray Customer Service Engineer has expert knowledge in matters of design and build of the solution. The Foray Customer Service Engineer will: • Lead cross-functional teams of subject matter experts, and business analyst and will facilitate workgroup meetings. • Lead and/or consult on the development of the System Architecture and work closely with the DTMB Architect to ensure the Solution satisfies requirements and will function as designed in the State Enterprise network.	• Provide status updates through the Foray ticketing system daily and as requested. • Participate in testing and training

21. CONTRACTOR PERSONNEL REQUIREMENTS

Contractor must present certifications evidencing satisfactory Michigan State Police Background checks ICHAT and drug tests for all staff identified for assignment to this project. In addition, proposed Contractor personnel will be required to complete and submit an RI-8 Fingerprint Card for the National Crime Information Center (NCIC) Finger Prints, if required by project. Contractor will pay for all costs associated with ensuring their staff meets all requirements.

22. STATE RESOURCES/RESPONSIBILITIES

The State will provide the following resources as part of the implementation and ongoing support of the Solution.

State Resource Roles and Responsibilities

Role	Responsibility	Participation Commitment
State Contract Administrator: Jarod Barron, IT Category Analyst Central Procurement Services	• Administer the terms of this Contract • Approve and execute any Change Notices under this Contract	• Must respond to requests for contract changes
MSP Sponsor: Inspector John Bowen, Assistant Director MSP Laboratories	The MSP Sponsor represents the business executive leadership for the project. The MSP Sponsor will coordinate with the DTMB Sponsor to: • Resolve escalated project issues in a timely manner • Review project management plan, schedule, status, and issues • Resolve escalated deviations from project management plan or schedule • Provide change control review and approval • Ensure timely availability of escalated State resource issues	• Must participate in project oversight meetings

DTMB Sponsor: Gordon Mayes, Business Relationship Manager DTMB Agency Services	The DTMB Sponsor represents the technology executive leadership for the project. The DTMB Sponsor will coordinate with the MSP Sponsor to: • Resolve escalated project issues in a timely manner • Review project management plan, schedule, status, and issues • Resolve escalated deviations from project management plan or schedule • Provide change control review and approval • Ensure timely availability of escalated State resource issues • Ensure DTMB resources and control of project costs for DTMB staff	• Must attend project oversight meetings
MSP Business Owner: Inspector John Bowen, Assistant Director MSP Laboratories	• Primary point of contact for all business-related discussions • Perform duties as necessary for Steering Committee, Change Control Board, and Project Leadership • Monitor timelines and scope for early containment of extensions and expansion. Ensure project alignment with MSP mission statements and strategic vision • Assist project with guidance and expertise as needed	• Must attend project oversight meetings • Attend or call-in for daily standups as needed
MSP Product Owner: Tracee McIntosh Technical Leader MSP Laboratories	• Assist with document review, and testing efforts • Perform user acceptance testing • Coordinate SME resources for, planning/standup/demo activities, and QA and UAT efforts • Perform project documentation and deliverable review and approval	• Must attend project oversight meetings • Attend daily standups • Participate in testing and training
MSP Departmental Analyst: Cari VanDouser	• Coordinate MSP resources as needed • Prepare project documentation and artifacts	• Attend daily standups • Attend weekly status meetings
DTMB Project Manager: Andrew Richards	• Obtain the relevant DTMB, MSP, and/or State department/division concurrence(s) for any Contractor-requested change or standard deviation to this contract. • Provide acceptance and sign-off of deliverable/milestone • Review and sign-off of timesheets and invoices • Utilize change control procedures • Conduct regular and ongoing review of the project to confirm that it meets original objectives and requirements	• Must attend Project Leadership meetings • Must be available in a timely manner to answer questions and make decisions
DTMB Security Architect: Andrea Beauford MCS Security Liaison: Clark Crain	• Conduct security assessment and produce system security plan according to the project schedule	• Participate in security accreditation process

23. MEETINGS

The Contractor must attend the following meetings via telephone conference call and provide relevant updates via phone or email at no additional cost to the State.

At the start of the engagement, the Contractor Project Manager must facilitate a project kick off meeting with the support from the State's Project Manager and the identified State resources to review the approach to accomplishing the project, schedule tasks and identify related timing, and identify any risks or issues related to the planned approach. From project kick-off until final acceptance and go-live, Contractor Project Manager must facilitate weekly meetings (or more if determined necessary by the parties) to provide updates on implementation progress. Following go-live, Contractor must facilitate monthly meetings (or more or less if determined necessary by the parties) to ensure ongoing support success.

Meetings the Contractor Will Regularly Conduct Throughout the Project

Meeting Types	Purpose	Frequency	Attendees
Kickoff meeting	To bring together project stakeholders to review and agree upon approach, work breakdown structure, schedule, milestone, deliverables, known risks and issues, mitigation strategies, escalation protocols, change control processes, and formats and frequency for various reports and communications.	Once at the beginning of the project	MSP Business Owner, Contractor Project Manager, Contractor Senior Software Engineer, MSP Product Owner, MSP Departmental Analyst, DTMB project manager, DTMB Business Relation Manager.
Daily Standup	During the implementation period, for each team member to report what they did yesterday, what they are doing today, and what impediments, if any, they are experiencing. This serves forward momentum and fast resolution of impediments.	Daily	Contractor Project Manager, Contractor Senior Software Engineer. MSP Product Owner, MSP Departmental Analyst
Weekly status meetings	To review project status, work completed, upcoming work, risks and issues, and any other topic requiring MSP and DTMB's attention	Weekly	Contractor Project Manager, Contractor Senior Software Engineer, MSP Product Owner, MSP Departmental Analyst, DTMB project manager
Monthly Project Leadership meetings	To review overall status with MSP and DTMB stakeholders	Monthly	MSP Business Owner, Contractor Project Manager, Contractor Senior Software Engineer, MSP Product Owner, MSP Departmental Analyst, DTMB project manager

Ad hoc meetings	To discuss any issue requiring collaboration between one or more parties.	As needed	Contractor project manager and applicable parties from MSP or DTMB

The Contractor will include a comprehensive Communication Plan in the Project Management Plan deliverable that identifies when, where, and who is to participate in each type of meeting.

24. PROJECT CONTROL & REPORTS
Once the Project Kick-Off meeting has occurred, the Contractor Project Manager will deliver weekly status reports to the State's Project Manager with the following:
1. Progress to complete milestones, comparing forecasted completion dates to planned and actual completion dates.
2. Accomplishments during the reporting period.
3. Tasks planned for the next reporting period.
4. Identify any existing issues which are impacting the project and the steps being taken to address those issues
5. Identify any new risks and describe progress in mitigating high impact/high probability risks previously identified

The format of each report type will be reviewed at the kickoff meeting to gain approval and will be used throughout the duration of the project.

25. MILESTONES AND DELIVERABLES
The milestone schedule and associated deliverables are set forth below.

Milestone Event	Associated Milestone Deliverable(s)	Schedule
1. Project Plan	• Project Kickoff, • Project Management Schedule, • Project Charter, • Project Management Plan	TBD
2. Lansing Installation, Configuration, Training, Data Migration, Go-Live Completed	• All Hardware and software installed, connected to the VLAN, configured, and working. • User Familiarization Training at each lab is completed. • Data migration complete. • Go-live event complete. • MSP Final Acceptance	TBD
3. Grand Rapids Installation, Configuration, Training, Data Migration, Go-Live Completed	• All Hardware and software installed, connected to the VLAN, configured, and working. • User Familiarization Training at each lab is completed. • Data migration complete. • Go-live event complete. • MSP Final Acceptance	TBD
4. Northville Installation, Configuration, Training, Data Migration, Go-Live Completed	• All Hardware and software installed, connected to the VLAN, configured, and working.	TBD

		• User Familiarization Training at each lab is completed. • Data migration complete. • Go-live event complete. • MSP Final Acceptance	
5.	Marquette Installation, Configuration, Training, Data Migration, Go-Live Completed	• All Hardware and software installed, connected to the VLAN, configured, and working. • User Familiarization Training at each lab is completed. • Data migration complete. • Go-live event complete. • MSP Final Acceptance	<mark>TBD</mark>
6.	Grayling Installation, Configuration, Training, Data Migration, Go-Live Completed	• All Hardware and software installed, connected to the VLAN, configured, and working. • User Familiarization Training at each lab is completed. • Data migration complete. • Go-live event complete. • MSP Final Acceptance	<mark>TBD</mark>
7.	Bridgeport Installation, Configuration, Training, Data Migration, Go-Live Completed	• All Hardware and software installed, connected to the VLAN, configured, and working. • User Familiarization Training at each lab is completed. • Data migration complete. • Go-live event complete. • MSP Final Acceptance	<mark>TBD</mark>

The Contractor Project Manager will be responsible for maintaining the project schedule identifying tasks, durations, forecasted dates and resources required to meet the timeframes as agreed to by both parties.

Changes to scope, schedule or cost must be addressed through a formal change request process with the State and the Contractor to ensure understanding, agreement and approval of authorized parties to the change and clearly identify the impact to the overall project.

Deliverable Review Process
The Contractor will be following the below review process for each formal deliverable that is identified in the project schedule. Following the flow diagram is a detailed description of each step.

Change Control
The MSP Product Owner and Foray Project Manager shall agree to any changes of the project plan or timeline in writing.

The purpose of a Change Control Plan is to describe the process involved with identifying, escalating, and managing project changes. A project change is defined as something that is outside the documented and approved project scope or is a change to project requirements, project schedule, or project cost (including resource effort). A project change requires approval for additional resources, funding, or modifications to the project schedule. The change control process defines how to handle project changes that present either a negative or positive impact on deliverables, schedule, budget, and/or resources. The State of Michigan's enterprise PPM tool is the repository for all project changes.

Change Control Roles and Responsibilities

MSP Sponsor:
The MSP Sponsor does not directly participate in change control activities but serves as a point of escalation as required. The MSP Sponsor has sole decision-making authority to approve changes to the total project budget.

Foray Project Manager:
The Foray Project Manager is responsible for bringing change requests to the MSP Product Owner for its review and decision-making. Upon approval of a change request, the Foray Project Manager becomes responsible for overseeing the change and making appropriate modifications to appropriate project documents.

Communicating Project Changes
Any changes to project plan or milestones, including decisions related to change requests, will be circulated to project sponsors and State executives. Project team members will be notified by e-mail regarding the disposition of change requests.

SUITE Documentation
In managing its obligation to meet the above milestones and deliverables, the Contractor is required to use the applicable State Unified Information Technology Environment (SUITE) methodologies, or an equivalent methodology proposed by the Contractor.

SUITE's primary goal is the delivery of on-time, on-budget, quality systems that meet customer expectations. SUITE is based on industry best practices, including those identified in the Project Management Institute's PMBoK and the Capability Maturity Model Integration for Development. It was designed and implemented to standardize methodologies, processes, procedures, training, and tools for project management and systems development lifecycle management. It offers guidance for efficient, effective improvement across multiple process disciplines in the organization, improvements to best practices incorporated from earlier models, and a common, integrated vision of improvement for all project and system related elements.

While applying the SUITE framework through its methodologies is required, SUITE was not designed to add layers of complexity to project execution. There should be no additional costs from the Contractor, since it is expected that they are already following industry best practices which are at least similar to those that form SUITE's foundation.

SUITE's companion templates are used to document project progress or deliverables. In some cases, Contractor may have in place their own set of templates for similar use. Because SUITE can be tailored to fit specific projects, project teams and State project managers may decide to use the Contractor's provided templates, as long as they demonstrate fulfillment of the SUITE methodologies.

26. ADDITONAL INFORMATION
The State reserves the right to purchase any additional services or products from the Contractor during the duration of the Contract.

SCHEDULE B
PRICING

Cost Summary

Year	Item	Cost*
1	New hardware & software (includes maintenance)	$268,012
2	Maintenance (pre-existing plus new HW and SW)	$100,297
3	Maintenance (pre-existing plus new HW and SW)	$101,894
4	Maintenance (pre-existing plus new HW and SW)	$106,085
5	Maintenance (pre-existing plus new HW and SW)	$113,691
6	Maintenance (pre-existing plus new HW and SW)	$124,883
	TOTAL	**$814,925**

*Contractor also offers the State 1% net 10 payment terms on these prices.

Notes
If Contractor reduces its prices for any of the software or services during the term of this Contract, the State shall have the immediate benefit of such lower prices for new purchases. Contractor shall send notice to the State's Contract Administrator with the reduced prices within fifteen (15) Business Days of the reduction taking effect.

Travel and Expenses
The State does not pay for overtime or travel expenses.

SCHEDULE C
Terms for On-Site Hardware

1.   Definitions. All initial capitalized terms in this Schedule that are not defined herein shall have the respective meanings given to them in the Contract.

2.   Hardware. Contractor must provide fully functioning Hardware that fully integrates with the Software.

3.   Delivery. Contractor must deliver the Hardware to the locations designated by the State by the delivery date specified in the Statement of Work. Five days prior to the actual delivery date, Contractor must give written notice to the State specifying the precise delivery date and time. Contractor must pay all costs associated with replacing any item damaged in transit to the final destination. Contractor acknowledges that no item will be considered delivered on the delivery date if it is damaged or otherwise not ready for the State to begin its acceptance procedures. Contractor must, at a minimum, package the Hardware according to industry standards and include a packing slip with each shipment. Contractor must also arrange for any rigging and drayage necessary to deliver the Hardware. All costs associated with packaging, shipping, transportation, delivery and insurance are to be borne by Contractor.

4.   Installation, Integration and Configuration.

    a.   Contractor must unpack, assemble, install, integrate, interconnect, and configure all the Hardware at the locations specified in the Statement of Work. Where necessary to complete installation, Contractor must provide all required moving and installation resources, including but not limited to personnel, packing material, and floor protection panels as necessary. After completing installation, Contractor must provide the State with written notification that the Hardware is ready for use.

    b.   Contractor must supply all materials required to complete the assembly, installation, integration, interconnection, and configuration of the Hardware at the locations specified in the Statement of Work so that they are ready for use and acceptance, including providing and setting up all required connections to the power supply and any other necessary cables and any other accessories or supplies.

    c.   Contractor must leave all work areas clean once installation is complete, which includes removing and disposing of all packing materials.

    d.   Unless otherwise provided for in the Pricing Schedule, all costs associated with the installation services described in this Section are to be borne by Contractor.

5.   Documentation. Contractor must provide to the State all end-user documentation for the Hardware. The documentation, at a minimum, must include all the documentation available to consumers from the manufacturer of the Hardware about the technical specifications of the Hardware, installation requirements, and operating instructions, as well as details about the software programs with which the Hardware functions.

6.   Acceptance. The following Section applies generally to the acceptance of Hardware.

    a.   The Hardware is subject to inspection and acceptance by the State. As part of its acceptance process, the State may test any function of the Hardware to determine whether they meet the requirements set forth in the Statement of Work. If the Hardware does not meet the requirements set forth in the Statement of Work, the State may reject the Hardware or require that they be corrected at Contractor's sole cost and expense before accepting them.

b.   Acceptance by the State does not relieve Contractor of its responsibility for defects in the Hardware or other failures to meet the requirements of the Statement of Work or of its support and maintenance obligations.

c.   The procedure for acceptance will be as follows:

i.   Contractor must notify the State in writing once the Workstations are ready for use, in accordance with Section 4.a above;

ii.   the State will have ten (10) Business Days to perform its acceptance procedures (the "Acceptance Period"); and

iii.   if the State provides notice of any deficiency during the Acceptance Period, Contractor must address the deficiency at no cost to the State as soon as possible and notify the State in writing once the work is complete, at which time the State will be entitled to re-inspect the Hardware and the Acceptance Period will start again.

7.   Support and Warranty for Hardware.

a.   Contractor will provide maintenance and support of the Hardware in accordance with the requirements set forth in the applicable Statement of Work.

b.   Contractor will provide manufacturer's warranties regarding all Hardware or as otherwise provided for in the Contract.

8.   Risk of Loss and Title. Until final acceptance, title and risk of loss or damage to Hardware remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Hardware, Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Hardware remains with Contractor. Rejected Hardware not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Hardware. Title passes to the State upon final acceptance of the Hardware.

SCHEDULE D
Data Security Requirements

1. Definitions. For purposes of this Schedule, the following terms have the meanings set forth below. All initial capitalized terms in this Schedule that are not defined in this **Section 1** shall have the respective meanings given to them in the Contract.

"**Contractor Security Officer**" has the meaning set forth in **Section 0** of this Schedule.

"**Contractor Systems**" has the meaning set forth in **Section 5** of this Schedule.

"**FedRAMP**" means the Federal Risk and Authorization Management Program, which is a federally approved risk management program that provides a standardized approach for assessing and monitoring the security of cloud products and services.

"**FISMA**" means The Federal Information Security Modernization Act of 2014 (Pub.L. No. 113-283 (Dec. 18, 2014.).

"**Hosted Services**" means the hosting, management and operation of the computing Hardware, ancillary equipment, networking, Software, firmware, data, other services (including support services), subcontractors, and related resources for remote electronic access and use by the State and its Authorized Users, including any services and facilities related to disaster recovery obligations.

"**NIST**" means the National Institute of Standards and Technology.

"**PSP**" means the State's IT Policies, Standards and Procedures.

2. Contractor will appoint a Contractor employee to respond to the State's inquiries regarding the security of the Contractor Systems who has sufficient knowledge of the security of the Contractor Systems and the authority to act on behalf of Contractor in matters pertaining thereto ("**Contractor Security Officer**"). **Protection of the State's Confidential Information**. Throughout the Term and at all times in connection with its actual or required performance of the Services, Contractor will:

2.1. maintain FedRAMP authorization for the Hosted Services throughout the Term, and in the event the contractor is unable to maintain FedRAMP authorization, the State, at its sole discretion, may either a) require the Contractor to move the Software and State Data to an alternative Hosting Provider selected and approved by the State at Contractor's sole cost and expense without any increase in Fees, or b) immediately terminate this Contract for cause pursuant to Section 22.1 of the Contract;

2.2. ensure that the Software is securely hosted, supported, administered, and accessed in a data center that resides in the continental United States, and minimally meets Uptime Institute Tier 3 standards (www.uptimeinstitute.com), or its equivalent;

2.3. maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State's Confidential Information that comply with the requirements of the State's data security policies as set forth in the Contract, and must, at a minimum, remain compliant with FISMA and the NIST Special Publication 800.53 (most recent version) MOD Controls using minimum control values as established in the applicable SOM PSPs;

2.4.   provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, transfer, commingling or processing of such information that ensure a level of security appropriate to the risks presented by the processing of the State's Confidential Information and the nature of such Confidential Information, consistent with best industry practice and applicable standards (including, but not limited to, compliance with FISMA, NIST, CMS, IRS, FBI, HIPAA, and PCI requirements);

2.5.   take all reasonable measures to:

(a)   secure and defend all locations, equipment, systems and other materials and facilities employed in connection with the Services against "hackers" and others who may seek, without authorization, to disrupt, damage, modify, access or otherwise use Contractor Systems or the information found therein; and

(b)   prevent (i) the State and its Authorized Users from having access to the data of other customers or such other customer's users of the Services; (ii) the State's Confidential Information from being commingled with or contaminated by the data of other customers or their users of the Services; and (iii) unauthorized access to any of the State's Confidential Information;

2.6.   ensure that State Data is encrypted in transit and at rest using FIPS validated AES encryption and a key size of 256bit or higher encryption;

2.7.   ensure the Hosted Services support Identity Federation/Single Sign-on (SSO) capabilities using Security Assertion Markup Language (SAML), OAuth, OpenID or comparable mechanisms;

2.8.   ensure the Hosted Services implements FIPS/NIST compliant multi-factor authentication for privileged/administrative and other identified access; and

2.9.   assist the State, at no additional cost, with development, completion and on-going maintenance of a system security plan (SSP) using the State's automated governance, risk and compliance (GRC) platform, which requires Contractor to submit evidence, upon request from the State, in order to validate Contractor's security controls within two weeks of the State's request. On an annual basis, or as otherwise required by the State such as for significant changes, re-assessment of the system's controls will be required to receive and maintain authority to operate (ATO). All identified risks from the SSP will be remediated through a Plan of Action and Milestones (POAM) process with remediation time frames based on the risk level of the identified risk..

3.   Unauthorized Access. Contractor may not access, and shall not permit any access to, State systems, in whole or in part, whether through Contractor's Systems or otherwise, without the State's express prior written authorization. Such authorization may be revoked by the State in writing at any time in its sole discretion. Any access to State systems must be solely in accordance with the Contract and this Schedule, and in no case exceed the scope of the State's authorization pursuant to this **Section 4**. All State-authorized connectivity or attempted connectivity to State systems shall be only through the State's security gateways and firewalls and in compliance with the State's security policies set forth in the Contract as the same may be supplemented or amended by the State and provided to Contractor from time to time.

4.   Contractor Systems. Contractor will be solely responsible for the information technology infrastructure, including all computers, software, databases, electronic systems (including database management systems) and networks used by or for Contractor in connection with the Services

("**Contractor Systems**") and shall prevent unauthorized access to State systems through the Contractor Systems.

5. **Security Audits**. During the Term, Contractor will:

> 5.1.   maintain complete and accurate records relating to its data protection practices, IT security controls, and the security logs of any of the State's Confidential Information, including any backup, disaster recovery or other policies, practices or procedures relating to the State's Confidential Information and any other information relevant to its compliance with this Schedule;

> 5.2.   upon the State's request, make all such records, appropriate personnel and relevant materials available during normal business hours for inspection and audit by the State or an independent data security expert that is reasonably acceptable to Contractor, provided that the State: (i) gives Contractor at least five (5) Business Days prior notice of any such audit; (ii) undertakes such audit no more than once per calendar year, except for good cause shown; and (iii) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Contractor's normal business operations and that complies with the terms and conditions of all data confidentiality, ownership, privacy, security and restricted use provisions of the Contract. The State may, but is not obligated to, perform such security audits, which shall, at the State's option and request, include penetration and security tests, of any and all Contractor Systems and their housing facilities and operating environments; and

> 5.3.   if requested by the State, provide a copy of Contractor's FedRAMP System Security Plan to the State within two weeks. The System Security Plan will be recognized as Contractor's Confidential Information.

6. **Nonexclusive Remedy for Security Breach**. Any failure of the Services to meet the requirements of this Schedule with respect to the security of any State Data or other Confidential Information of the State, including any related backup, disaster recovery or other policies, practices or procedures, is a material breach of the Contract for which the State, at its option, may terminate the Contract immediately upon written notice to Contractor without any notice or cure period, and Contractor must promptly reimburse to the State any Fees prepaid by the State prorated to the date of such termination.