STATE OF MICHIGAN
ENTERPRISE PROCUREMENT

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 **071B4300107**

CONTRACTOR	
	DEWPOINT, INC.
	1921 East Miller
	Lansing, MI 48911
	Michelle Massey
	517-316-2869
	Michelle.Massey@dewpoint.com
	*******0595

STATE			
	Program Manager	Steve Wensko	DTMB
		517-335-1084	
		wenskos@michigan.gov	
	Contract Administrator	Terry Mead	DTMB
		(517) 284-7035	
		meadt@michigan.gov	

CONTRACT SUMMARY

DESCRIPTION: Pre-Qual IT Services Program for Software Modernization

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
June 1, 2014	May 31, 2019	3 - 1 Year	May 31, 2019

PAYMENT TERMS	DELIVERY TIMEFRAME

ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
☐ P-card	☐ Direct Voucher (DV)	☐ Other	☒ Yes	☐ No

MINIMUM DELIVERY REQUIREMENTS

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
☐		☐		

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
$ 1.00	$ 0.00	$ 1.00

DESCRIPTION: Effective October 6, 2016, DTMB has changed the Contract from requiring Requests for Proposals (RFP) to now requiring Statements of Work (SOW). See attached revised Software Modernization Pre-Qualification Program description. All other terms, conditions, specifications and pricing remain the same. Per (DTMB) contractor (request/proposal) and agency (request) agreement, and DTMB Procurement approval.

STATE OF MICHIGAN

SOFTWARE MODERNIZATION PRE-QUALIFICATION PROGRAM

PROGRAM DESCRIPTION

1. **Program Identification.** The State has established a software modernization pre-qualification program ("**Program**") designed to provide a pool of pre-qualified contractors who will assist the State in achieving its legacy system modernization initiatives. **This Program is for legacy system modernization work that has an aggregate cost of $5 million or less**. The pre-qualified contractors will provide the State assistance, fully, or partially, in one or more of the following areas:

    - Functional design and validation consulting services
    - Custom software development
    - Hosting
    - Pre-qualified vendor software
    - Integration services
    - Maintenance and support services

2. **Out of Scope.** The purchase of third-party software is out of scope. **This Program does not include contracting to develop and document business and technical requirements.**

3. **Pre-Qualified Contractors.** The pre-qualified contractors, which may be updated as determined by the State, were selected through a competitive bidding process. The contractors are:

Contract Number	Contractor Name	Contract Number	Contractor Name
071B4300101	Accenture, LLP	071B4300111	IBM Corporation
071B4300102	Acro Service Corporation	071B4300112	Informatix Inc.
071B4300103	CAI (Computer Aid, Inc.)	071B4300113	Deloitte Consulting LLP
071B4300104	Ciber, Inc.	071B4300114	Open Systems Technologies DE, LLC
071B4300105	Cognizant Technology Solutions U.S. Corp.	071B4300115	Ricoh USA, Inc.
071B4300106	CW Professional Services LLC	071B4300116	Software AG USA, Inc.
071B4300107	Dewpoint	071B4300117	Sogeti USA
071B4300108	Dynamics Research Corporation	071B4300118	Systems Technology Group, Inc. (STG)
071B4300109	HP & Enterprise Services, Inc.	071B4300119	Unisys Corporation
071B4300110	HTC Global Services, Inc.	071B4300120	Vertex Computer Systems

4. **Tier II Process**. The State will issue a statement of work (SOW) to all pre-qualified contractors for projects to be performed under this Program. The Custom Software Development Contract Terms will apply to any Contract executed under this Program. Terms for maintenance and support and hosting services will be provided during the SOW process. The 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.

5. **Contract Administrators.** The Contract Administrator for each party is the only person authorized to (a) modify any terms and conditions, and (b) approve any Change Notices under this Contract **071B4300107**.

State of Michigan	**Contractor**
Terry Mead	**Michelle Massey**

Form No. DTMB-3521 (Rev. 4/2012)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract change will not be executed unless form is filed

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
525 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 1
to
CONTRACT NO. 071B4300107
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Dewpoint	Michelle Massey	Michelle.Massey@depoint.com
1921 East Miller, Suite B	**TELEPHONE**	**CONTRACTOR #, MAIL CODE**
Lansing, MI 48911	(517) 316-2869 (phone) (517) 393-5448 (fax)	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER	DTMB	James McFarlane	517-241-1842	mcfarlanej@michigan.gov
BUYER	DTMB	Whitnie Zuker	517-284-7030	Zukerw@michigan.gov

CONTRACT SUMMARY:

DESCRIPTION: **Pre-Qualified IT Services Program for Software Modernization- Custom Software Development**

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
June 1, 2014	May 31, 2019	3, one year	May 31, 2019
PAYMENT TERMS	**F.O.B**	**SHIPPED**	**SHIPPED FROM**
N/A	N/A	N/A	N/A

ALTERNATE PAYMENT OPTIONS:	AVAILABLE TO MiDEAL PARTICIPANTS
☐ P-card ☐ Direct Voucher (DV) ☐ Other	☒ Yes ☐ No

MINIMUM DELIVERY REQUIREMENTS:

N/A

DESCRIPTION OF CHANGE NOTICE:

EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
☒ No ☐ Yes	☐	☐		

VALUE/COST OF CHANGE NOTICE:	ESTIMATED REVISED AGGREGATE CONTRACT VALUE:
$0.00	$0.00

Effective 1/16/15, the following subcontractor has been added to this contract:

GDI Infotech
3775 Varsity Drive
Ann Arbor Michigan 48108
734-477-6900
Contact: Thomas John

The State's Contract Compliance Inspector is now referred to as a Program Manager. James McFarlane has been identified as the Program Manager.

All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Procurement approval.

Form No. DTMB-3522 (Rev. 4/2012)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

June 3, 2014

NOTICE
OF
CONTRACT NO. 071B4300107
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Dewpoint 1921 East Miller, Suite B Lansing, MI 48911	Michelle Massey	Michelle.Massey@dewpoint.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(517) 316-2869 (phone) (517) 393-5448 (fax)	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM ADMIINISTRATOR	DTMB DTMB	Genevieve Hayes Greg Faremouth	517-335-4730 517-241-1646	HayesG2@michigan.gov faremouthg@michigan.gov
CONTRACT ADMINSTRATOR/BUYER	DTMB	Whitnie Zuker	517-284-7030	zukerw@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION:			
Pre-Qualified IT Services Program for Software Modernization- Custom Software Development			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
5 years	June 1, 2014	May 31, 2019	3, 1 Year Options
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
☐ P-card ☐ Direct Voucher (DV) ☐ Other			☒ YES ☐ NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:	$0.00		

Form No. DTMB-3522 (Rev. 4/2012)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CONTRACT NO. 071B4300107

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Dewpoint 1921 East Miller, Suite B Lansing, MI 48911	Michelle Massey	Michelle.Massey@dewpoint.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(517) 316-2869 (phone) (517) 393-5448 (fax)	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM ADMIINISTRATOR	DTMB DTMB	Genevieve Hayes Greg Faremouth	517-335-4730 517-241-1646	HayesG2@michigan.gov faremouthg@michigan.gov
CONTRACT ADMINSTRATOR/BUYER	DTMB	Whitnie Zuker	517-284-7030	zukerw@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION:			
Pre-Qualified IT Services Program for Software Modernization- Custom Software Development			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
5 years	June 1, 2014	May 31, 2019	3, 1 Year Options
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
☐ P-card ☐ Direct Voucher (DV) ☐ Other			☒ YES ☐ NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:	$0.00		

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation # 071I3200062. Orders for delivery will be issued directly by the Department of Technology, Management & Budget through the issuance of a Purchase Order Form.

Notice of Contract #: 071B4300107

FOR THE CONTRACTOR:	**FOR THE STATE:**
Dewpoint	
Firm Name	Signature
	Jeff Brownlee, Chief Procurement Officer
Authorized Agent Signature	Name/Title
	DTMB Procurement
Authorized Agent (Print or Type)	Enter Name of Agency
Date	Date

STATE OF MICHIGAN

SOFTWARE MODERNIZATION

PRE-QUALIFICATION PROGRAM

Program Identification. The State has established a software modernization pre-qualification program ("**Program**") designed to provide a pool of pre-qualified contractors who will assist the State in achieving its legacy system modernization initiatives. **This Program is for legacy system modernization work that has an aggregate cost of $5 million or less**. The pre-qualified contractors will provide the State assistance, fully, or partially, in one or more of the following areas:

Functional design and validation consulting services
Custom software development
Hosting
Pre-qualified vendor software
Integration services
Maintenance and support services

Out of Scope. The purchase of third-party software is out of scope. **This Program does not include contracting to develop and document business and technical requirements.**

Pre-Qualified Contractors. The pre-qualified contractors, which may be updated as determined by the State, were selected through a competitive bidding process. The contractors are:

Contract Number	Contractor Name	Contract Number	Contractor Name
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071B4300103	CAI (Computer Aid, Inc.)	071B4300113	Deloitte Consulting LLP
071B4300104	Ciber, Inc.	071B4300114	Open Systems Technologies DE, LLC
071B4300105	Cognizant Technology Solutions U.S. Corp.	071B4300115	Ricoh USA, Inc.
071B4300106	CW Professional Services LLC	071B4300116	Software AG USA, Inc.
071B4300107	Dewpoint	071B4300117	Sogeti USA
071B4300108	Dynamics Research Corporation	071B4300118	Systems Technology Group, Inc. (STG)
071B4300109	HP & Enterprise Services, Inc.	071B4300119	Unisys Corporation
071B4300110	HTC Global Services, Inc.	071B4300120	Vertex Computer Systems

Tier II Process. The State will issue a request for proposal (RFP) to all pre-qualified contractors for projects to be performed under this Program. The Custom Software Development Contract Terms will apply to any Contract executed under this Program. Terms for maintenance and support and hosting services will be provided during the RFP process. The 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.

Contract Administrators. The Contract Administrator for each party is the only person authorized to (a) modify any terms and conditions, and (b) approve any Change Notices under this Contract **071B4300107**.

State of Michigan	**Contractor**
Whitnie Zuker	**Michelle Massey**

STATE OF MICHIGAN

CONTRACT TERMS

CUSTOM SOFTWARE DEVELOPMENT

This CUSTOM SOFTWARE DEVELOPMENT CONTRACT (this "**Contract**") is agreed to between the State of Michigan (the "**State**") and Dewpoint ("**Contractor**"), a Michigan Corporation. This Contract is effective on June 1, 2014 ("**Effective Date**"), and unless earlier terminated, will expire on May 31, 2019 (the "**Term**").

This Contract may be renewed for up to three (3) additional one (1) year period(s). Renewal must be by written agreement of the parties, and will automatically extend the Term of this Contract.

The parties agree as follows:

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

"**Acceptance**" has the meaning set forth in **Section 9.5**.

"**Acceptance Tests**" means such tests as may be conducted in accordance with **Section 9** and the Statement of Work to determine whether any Software Deliverable meets the requirements of this Contract and the Specifications and Documentation.

"**Affiliate**" means any entity which directly or indirectly controls, is controlled by or is under common control of Contractor. The term "control" means the possession of the power to direct or cause the direction of the management and the policies of an entity, whether through the ownership of a majority of the outstanding voting rights or by contract or otherwise.

"**Aggregate Software**" means the Software, as a whole, to be developed or otherwise provided under the Statement of Work. For avoidance of doubt, if the Statement of Work provides for a single Software Deliverable, such Software Deliverable also constitutes Aggregate Software.

"**Allegedly Infringing Materials**" has the meaning set forth in **Section 18.3(b)(ii)**.

"**Approved Open-Source Components**" means Open-Source Components that the State has approved to be included in or used in connection with any Software developed or provided under this Contract, and are specifically identified in the Statement of Work.

"**Approved Third-Party Materials**" means Third-Party Materials that the State has approved to be included in or for use in connection with any Software developed or provided under this Contract, and are specifically identified in the Statement of Work.

"**Background Technology**" means all Software, data, know-how, ideas, methodologies, specifications, and other technology in which Contractor owns such Intellectual Property Rights as are necessary for Contractor to grant the rights and licenses set forth in **Section 14.1**, and for the State (including its licensees, successors and assigns) to exercise such rights and licenses, without violating any right of any Third Party or any Law or incurring any payment obligation to any Third Party. Background Technology must: (a) be identified as Background Technology in the Statement of Work; and (b) have been developed or otherwise acquired by Contractor prior to the date of the Statement of Work, or have been developed by Contractor outside of its performance under the Statement of Work. Background Technology will also include any general consulting tool or methodology created by Contractor, which will not be required to be identified in the Statement of Work.

"**Business Day**" means a day other than a Saturday, Sunday or State holiday.

"**Business and Technical Requirements Specifications**" means the specifications setting forth the State's business requirements and technical specifications regarding the features and functionality of the Software, as set forth in **Schedule B**.

"**Change**" has the meaning set forth in **Section 2.3**.

"**Change Notice**" has the meaning set forth in **Section 2.3(b)**.

"**Change Proposal**" has the meaning set forth in **Section 2.3(a)**.

"**Change Request**" has the meaning set forth in **Section 2.3**.

"**Confidential Information**" has the meaning set forth in **Section 22.1**.

"**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's Bid Response**" means the Contractor's proposal submitted in response to the RFP.

"**Contractor Personnel**" means all employees of Contractor or any Permitted Subcontractors involved in the performance of Services or providing Work Product under this Contract.

"**Deliverables**" means all Software Deliverables and all other documents, Work Product, 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.

"**Derivative Work**" means any modification, addition, upgrade, update, or improvement of the Software and any other work constituting a derivative work under the United States Copyright Act, 17 U.S.C. Section 101, *et seq.*

"**Dispute Resolution Procedure**" means the procedure for resolving disputes under this Contract as set forth in **Section 29**.

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

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

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

"**Fees**" has the meaning set forth in **Section 11.1**

"Financial Audit Period" has the meaning set forth in **Section 27.1**.

"**Force Majeure**" has the meaning set forth in **Section30.8**.

"**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 deprive the State of its lawful right to use such Software.

"**HIPAA**" has the meaning set forth in **Section 21.1**.

"**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.

"**Initial Statement of Work**" means the unexecuted Statement of Work for the initial Software development and related Services, attached as **Exhibit 1** to this Contract.

"**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.

"**Intended Users**" means the users that are intended to use Software or particular features or functions of the Software, as described in the Specifications for such Software.

"**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, other requirement or rule of law of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

"**Maintenance and Support Schedule**" means the schedule attached as **Schedule C**, setting forth the Maintenance and Support Services, the Support Fees, and the parties' additional rights and obligations with respect to such services.

"**Maintenance and Support Services**" means the Software maintenance and support services the Contractor is required to or otherwise does provide under this Contract as set forth in the Maintenance and Support Schedule.

"**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.

"**Non-Conformity**" means any failure of any: (a) Software or Documentation to materially conform to the requirements of this Contract (including the Statement of Work) or (b) Software to materially conform to the requirements of this Contract or the Specifications or Documentation.

"**Notice of Recommendation Date**" means the date that the Contractor was formally awarded the Contract.

"**Object Code**" means computer programs assembled or compiled in magnetic or electronic binary form on software media, which are readable and useable by machines, but not generally readable by humans without reverse assembly, reverse compiling, or reverse engineering.

"**Open-Source Components**" means any software component that is subject to any open-source copyright license contract, including any GNU General Public License or GNU Library or Lesser Public License, or other license contract that substantially conforms to the Open Source

Initiative's definition of "open source" 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 3.3**.

"**Operating Environment**" means, collectively, the State platform and environment on, in, or under which 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 5.5**.

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

"**Project Manager**" are the individuals appointed by each party to monitor and coordinate the day-to-day activities of this Contract. The State's Project Managers will issue the State's notice of Acceptance for all Software Deliverables and Aggregate Software. Each party's Project Manager(s) will be identified in the Statement of Work.

"**Representatives**" means a party's employees, officers, directors, consultants, legal advisors, and Permitted Subcontractors.

"**RFP**" means the State's request for proposal designed to solicit responses for Services under this Contract.

"Security Breach Indemnity Cap" has the meaning set forth in **Section 21.5**.

"**Services**" means any of the services Contractor is required to or otherwise does provide under this Contract or the Statement of Work, as more fully described in this Contract or the Statement of Work.

"**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 any Software.

"**Software**" means the computer program(s), including programming tools, scripts and routines, the Contractor is required to or otherwise does develop or otherwise provide under this Contract, as described more fully in the Statement of Work, including all updates, upgrades, new versions, new releases, enhancements, improvements, and other modifications made or provided under the Maintenance and Support Services. As context dictates, Software may refer to one or more Software Deliverables or Aggregate Software.

"**Software Deliverable**" means any Software, together with its Documentation, required to be delivered as a Milestone as set forth in the Implementation Plan for such Software.

"**Source Code**" means the human readable source code of the Software to which it relates, in the programming language in which such 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, operate, support, maintain and develop modifications, upgrades, updates, enhancements, improvements and new versions of, and to develop computer programs compatible with, such Software.

"**Specifications**" means, for any Software, the specifications collectively set forth in the final Statement of Work.

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

"**State Data**" has the meaning set forth in **Section 21.1**.

"**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, whether or not the same: (a) are owned by the State, a Third Party or in the public domain; or (b) qualify for or are protected by any Intellectual Property Rights.

"**State Resources**" has the meaning set forth in **Section 6.1**.

"**Statement of Work**" means the final statement of work executed by the parties and attached as **Schedule A** to this Contract.

"**Stop Work Order"** has the meaning set forth in **Section 16**.

"**Support Fees**" means the fees, if any, payable by the State for Maintenance and Support Services as set forth in the Maintenance and Support Schedule.

"**Support Commencement Date**" means, with respect to any Software, the date on which the Warranty Period for such Software expires or such other date as may be set forth in the Maintenance and Support Schedule.

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

"**Testing Period**" has the meaning set forth in **Section 9.1**.

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

"**Third-Party Materials**" means any materials and information, including documents, data, know-how, ideas, methodologies, specifications, software, content, and technology, in any form or media, in which any Person other than the State or Contractor owns any Intellectual Property Right, but excluding Open-Source Components.

"**Transition Period**" has the meaning set forth in **Section 15.4**.

"**Transition Responsibilities**" has the meaning set forth in **Section 15.4**.

"**Unauthorized Removal**" has the meaning set forth in **Section 5.4(b)**.

"**Unauthorized Removal Credit**" has the meaning set forth in **Section 5.4(c)**.

"**Warranty Period**" means, unless otherwise specified in the final Statement of Work, for any Software, the forty-five (45) calendar-day period commencing (a) in the case of Aggregate Software, upon the State's Acceptance; and (b) in the case of any updates, upgrades, new versions, new releases, enhancements and other modifications to previously-Accepted Aggregate Software, upon the State's receipt of such modification.

"**Work Product**" means all Software, Documentation, Specifications, and other documents, work product and related materials, that Contractor is required to, or otherwise does, create for the State under this Contract.

2. Statement of Work. Contractor must provide Services and Deliverables under the Statement of Work attached as **Schedule A** to this Contract. The Statement of Work will not be effective unless signed by each parties' Contract Administrator. Contractor agrees that prompt and timely performance of all such obligations in accordance with the Statement of Work (including the Implementation Plan and all Milestone Dates) is required.

2.1 Initial Statement of Work. Contractor will deliver to the State a proposed Initial Statement of Work with Contractor's Bid Response, which shall be in substantially the same form as **Exhibit 1**. If Contractor is awarded the bid, the State shall review and, in its discretion, approve or raise objections to Contractor's Initial Statement of Work. If the State raises any such objections, the parties shall negotiate in good faith to amend the Initial Statement of Work, provided that:

(a) to the extent the Initial Statement of Work does not comply with the requirements of this Contract and the Business and Technical Requirements Specifications set forth on **Schedule B**, it shall be amended to so comply; and

(b) either party may terminate negotiations and the tier II contract award if the parties fail to agree on a final Statement of Work within thirty (30) calendar days of the Notice of Recommendation Date, or such longer period as the parties mutually agree upon.

2.2 Final Statement of Work. Upon the parties' agreement to the Initial Statement of Work, each party shall cause the same to be signed by its Contract Administrator. Upon its mutual execution, the Initial Statement of Work will become final, and will be attached as **Schedule A** and form a part of this Contract.

2.3 Change Control Process. The State may at any time request in writing (each, a "**Change Request**") changes to the Statement of Work, including changes to the Services, Work Product, Implementation Plan, or any Specifications (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**.

(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, Work Product, or Deliverables;

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

(iii) any additional Third-Party Materials, Open-Source Components, and 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 fifteen (15) Business Days, unless the parties agree to a longer period, 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 each party'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, either party may initiate a Dispute Resolution Procedure. If the parties fail to enter into a Change Notice even after completion of the Dispute Resolution Procedure, 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; or

(iii) notwithstanding any provision to the contrary in the Statement of Work, terminate this Contract under **Section 15.2**.

(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 reasonable 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 Maintenance and 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. Within a reasonable time period, the State will respond in writing to such request and either: (i) accept the Change Request; (ii) reject the Change Request; or (iii) propose its own Change Request pursuant to the process described above. If the parties agree on carrying out a change requested by Contractor, a written Change Notice must be executed by both parties prior to Contractor's commencement of any changes.

3. Software. Contractor will design, develop, create, test, deliver, install, configure, integrate, customize and otherwise provide and make fully operational Software as described in the Statement of Work.

3.1 Delivery of Software. Contractor will provide all Software to the State in both Object Code and Source Code form, unless otherwise specified in the Statement of Work.

3.2 Third-Party Materials.

(a) Contractor will not include in any Software, and operation of all Software in accordance with its Specifications and Documentation will not require, any Third-Party Materials, other than Approved Third-Party Materials, which must be specifically approved by the State and identified and described in the Statement of Work, and will be licensed to the State in accordance with **Section 14.3**. For purposes of this Section, Third Party Materials do not include any State Materials.

(b) Contractor must secure, unless otherwise agreed to in the Statement of Work, at its sole cost and expense, all necessary rights, licenses, consents, approvals, and authorizations necessary for the State to use, perpetually and throughout the universe, all Approved Third-Party Materials as incorporated in or otherwise used in conjunction with Software as specified in the Statement of Work or elsewhere in this Contract.

3.3 Open-Source Components. Contractor will not include in any Software, and operation of all Software in accordance with its Specifications and Documentation will not require the use of, any Open-Source Components, other than Approved Open-Source Components, which must be specifically approved by the State and identified and described in the Statement of Work, and for which the relevant open-source license(s) (each, an "**Open-Source License**") are attached as exhibits to the Statement of Work. Contractor will provide the State with links to Source Code for Approved Open-Source Components in accordance with the terms of the Open-Source License(s) at no cost to the State.

4. Documentation. Prior to or concurrently with the delivery of any Software, or by such earlier or other date as may be specified in the Implementation Plan for such Software, Contractor will provide the State with complete and accurate Documentation for such Software. Where the Statement of Work requires or permits delivery of Software in two or more phases, Contractor will also provide the State with integrated Documentation for the Aggregate Software upon its delivery.

4.1 Adequacy of Documentation. All Documentation must include all such information as may be reasonably necessary for the effective installation, testing, use, support, and maintenance of the applicable Software by the Intended User, including the effective configuration, integration, and systems administration of the Software and performance of all other functions set forth in the Specifications.

4.2 Documentation Specifications. Contractor will provide all Documentation in both hard copy and electronic form, in such formats and media as are set forth in the Statement of Work, or as the State may otherwise reasonably request in writing.

4.3 Third-Party Documentation. Other than Documentation for Approved Third-Party Materials and Approved Open-Source Components, no Documentation will consist of or include Third-Party Materials. To the extent Documentation consists of or includes Third-Party Materials, Contractor must secure, at its sole cost and expense, all rights, licenses, consents, approvals and authorizations specified in **Section 14.3** with respect to Approved Third-Party Materials.

5. Performance of Services.

5.1 State Standards.

(a) The Contractor must adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at http://www.michigan.gov/dmb/0,4568,7-150-56355-108233--,00.html

(b) 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.

(c) Contractor is not authorized to make changes to any State systems without prior written authorization from the State's Project Manager. Any changes Contractor makes to any State systems with the State's approval must be done according to applicable State procedures, including security, access, and configuration standards.

5.2 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) 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 Intellectual Property Rights provisions that grant the State rights in the Work Product consistent with the provisions of **Section 13.1** and, upon the State's request, provide the State with a copy of each such executed Contract; and

(iii) if requested by the State, and at Contractor's sole cost and expense, conduct background checks on such Contractor Personnel, which background checks must comprise, at a minimum, a review of credit history, references and criminal record, in accordance with applicable Law.

(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.

5.3 Contractor's Project Manager. Throughout the Term of the Statement of Work, 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 the Statement of Work, 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 leaves the project for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation; or

(iv) Contractor's Project Manager leaves the project due to a for cause termination of employment, or the promotion or transfer of the Project

Manager, provided that such transfer or promotion occurs after twelve (12) months from the effective date of the final Statement of Work, and Contractor identifies a replacement approved by the State in advance and assigns the replacement to shadow the Project Manager for a period of at least thirty (30) calendar days.

(d) Contractor will promptly replace its Project Manager on the occurrence of any event set forth in **Section 5.3(c)**. Such replacement will be subject to the State's prior written approval.

5.4 Contractor's Key Personnel.

(a) The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State's Project Manager, and provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection.

(b) Contractor will not remove any Key Personnel from their assigned roles on the Statement of Work without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("**Unauthorized Removal**"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, due to a for cause termination of the Key Personnel's employment, or the promotion or transfer of the Key Personnel, provided that such transfer or promotion occurs after twelve (12) months from the effective date of the final Statement of Work and Contractor identifies a replacement approved by the State and assigns the replacement to shadow the Key Personnel who has been promoted or transferred for a period of at least 30 calendar, unless otherwise specified in the Statement of Work. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under **Section 15.1**.

(c) It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 15.1**, Contractor will issue to the State the corresponding credits set forth below (each, an "**Unauthorized Removal Credit**"):

(i) For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the credit amount will be $25,000.00 per individual if Contractor identifies a replacement approved by the State and assigns the replacement to shadow the Key Personnel who is leaving for a period of at least 30 calendar days before the Key Personnel's removal.

(ii) If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 calendar days, in addition to the $25,000.00 credit specified above, Contractor will credit the State $833.33 per calendar day for each day of the 30 calendar-day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to $25,000.00 maximum per individual. The total Unauthorized Removal Credits that may be assessed per Unauthorized Removal and failure to provide 30 calendar days of shadowing will not exceed $50,000.00 per individual.

(iii) Contractor's aggregate liability for all Unauthorized Removal Credits assessed under the Statement of Work shall not exceed $250,000, which will be the State's exclusive monetary remedy for Unauthorized Removals.

(d) Contractor acknowledges and agrees that each of the Unauthorized Removal Credits assessed under **Subsection (c)** above: (i) is a reasonable estimate of and compensation for the anticipated or actual harm to the State that may arise from the Unauthorized Removal, which would be impossible or very difficult to accurately estimate; and (ii) may, at the State's option, be credited or set off against any Fees or other charges payable to Contractor under this Contract.

5.5 Subcontractors. With the exception of Contractor's Affiliates, 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 (including to create any Work Product). The State's approval of any such Third Party (each Affiliate or approved Third Party, a "**Permitted Subcontractor**") does not relieve Contractor of its representations, warranties or obligations under this Contract. Subcontractors listed on Contractor's original bid response to RFP #071I3200062 will be considered Permitted Subcontractors 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 creating Work Product, 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 and Work Product;

(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) prior to the provision of Services or creation of Work Product by any Permitted Subcontractor:

(i) obtain from such Permitted Subcontractor confidentiality, work-for-hire and intellectual property rights assignment agreements, in form and substance acceptable by the State, not to be unreasonably withheld, giving the State rights consistent with those set forth in **Section 13.1** and **Section 21** and, upon request, provide the State with a fully-executed copy of each such contract; and

(ii) with respect to all Permitted Subcontractor employees providing Services or Work Product, comply with its obligations under **Section 5.2(b)**.

6. State Obligations.

6.1 State Resources and Access. The State is responsible for:

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

(b) 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.

6.2 State Project Manager. Throughout the Term of this Contract, the State will maintain two State employees to serve as the State's Project Managers under this Contract. The State's Project Managers will be identified in the Statement of Work.

(a) The State's Project Managers will:

(i) be responsible for overall management and supervision of the State's performance under this Contract;

(ii) be Contractor's primary point of contact for communications with respect to this Contract, including with respect to providing and receiving all day-to-day approvals and consents; and

(iii) issue the State's notice of Acceptance for all Software Deliverables and Aggregate Software.

(b) The State's Project Managers will 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.

7. Pre-Delivery Testing.

7.1 Testing By Contractor. Before delivering and installing any Software Deliverable, Contractor must:

(a) test the Software component of such Software Deliverable to confirm that it is fully operable, meets all material Specifications and will function in accordance with the Specifications and Documentation when properly installed in the Operating Environment;

(b) scan such Software Deliverable using industry standard scanning software and definitions to confirm it is free of Harmful Code;

(c) remedy any Non-Conformity or Harmful Code identified and retest and rescan the Software Deliverable; and

(d) prepare, test and, as necessary, revise the Documentation component of the Software Deliverable to confirm it is complete and accurate and conforms to all requirements of this Contract.

7.2 State Participation. The State has the right to be present for all pre-installation testing. Contractor must give the State at least fifteen (15) calendar days' prior notice of all such testing.

8. Delivery and Installation.

8.1 Delivery. Contractor will deliver each Deliverable, and install all Software, on or prior to the applicable Milestone Date in accordance with the delivery criteria set forth in the Statement of Work. Contractor will deliver each Software Deliverable, including complete Documentation in compliance with **Section 4**, and the applicable Source Code. No Software Deliverable will be deemed to have been delivered or installed unless it complies with the preceding sentence.

8.2 Site Preparation. As specified in the Statement of Work, the State or Contractor will be responsible for ensuring the relevant Operating Environment is set up and in working order to allow Contractor to deliver and install each Software Deliverable 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 each such Software Deliverable to give the State sufficient time to prepare for Contractor's delivery and installation of the Software Deliverable. 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.

8.3 Effect of State Delays. If, as a result of any failure by the State to perform any of its obligations under **Section 6** on a timely basis under the Statement of Work, Contractor is unable

to timely meet all or any remaining Milestones under the Statement of Work either at all or without incurring additional costs, Contractor may extend such Milestone Dates for up to the length of the State's delay in accordance with the following:

(a) Contractor shall promptly notify the State in writing, proposing a revised Implementation Plan reflecting new Milestone Dates for each affected Milestone, which Milestone Dates may be extended by no longer than the length of the State's delay.

(b) If the State disputes Contractor's right to extend Milestone Dates, or the extent of any proposed extension, the State shall promptly notify Contractor and the parties shall comply with the Dispute Resolution Procedure.

(c) If the parties agree on a revised Implementation Plan reflecting new Milestone Dates, such revision shall be set forth in a Change Notice executed by both parties.

(d) Notwithstanding anything contained in this **Section 8.3**, Contractor shall use its commercially reasonable efforts to meet the Milestone Dates specified in the Statement of Work without any extension.

9. Acceptance Testing; Acceptance.

9.1 Acceptance Testing.

(a) Upon installation of each Software Deliverable, Acceptance Tests will be conducted as set forth in this **Section 9.1** to ensure the Software Deliverable, including all Software and Documentation, conforms to the material requirements of this Contract, including the applicable Specifications and, in the case of the Software, the Documentation.

(b) All Acceptance Tests will take place at the designated Site(s) in the Operating Environment described in the Statement of Work for the Software Deliverable, commence on the Business Day following installation of such Software Deliverable 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 Contractor's costs and expenses related to Contractor's performance of, participation in, and observation of Acceptance Testing.

(c) Upon delivery and installation of the Aggregate Software under the Statement of Work, additional Acceptance Tests will be performed on the Aggregate Software as a whole to ensure full operability, integration, and compatibility among all elements of the Aggregate Software ("**Integration Testing**"). Integration Testing is subject to all procedural and other terms and conditions set forth in **Section 9.1**, **Section 9.3**, and **Section 9.4**.

(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 Deliverable or part or feature of such Software Deliverable that prevents testing from moving forward. In such event, Contractor will immediately, and in any case within ten (10) Business Days, correct such Non-Conformity (or proceed using a work around that has been authorized by the State in writing), whereupon the Acceptance Tests and Testing Period will resume for the balance of the Testing Period.

9.2 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 Deliverables.

(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 9.3** and **Section 9.4**.

(b) If such notice is provided by the State, is signed by both of the State's Project Managers, and identifies no Non-Conformities, such notice constitutes the State's Acceptance of such Software Deliverable or Aggregate Software.

(c) If such notice is provided by Contractor and identifies no Non-Conformities, the State will have thirty (30) Business Days to use such Software Deliverable in the Operating Environment and determine, pursuant to the Specifications and Documentation, whether such Deliverable 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 Deliverable or, in the case of Integration Testing, Aggregate Software, and of the State's non-acceptance thereof, whereupon the parties' rights, remedies and obligations will be as set forth in **Section 9.3** and **Section 9.4**; or

(ii) provide Contractor with a written notice of its Acceptance of such Software Deliverable or Aggregate Software, which must be signed by both of the State's Project Managers.

9.3 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 Deliverables, 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 9.1(a)** or **Section 9.2(c)(i)**, identifying any Non-Conformities.

9.4 Repeated Failure of Acceptance Tests. If Acceptance Tests identify any Non-Conformity in any Software Deliverable after a second or subsequent delivery of such Software Deliverable, or Contractor fails to re-deliver the Software Deliverable 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 9**;

(b) accept the Software Deliverable as a nonconforming deliverable, in which case the Fees for such Software Deliverable will be reduced equitably to reflect the value of the Software Deliverable as received relative to the value of the Software Deliverable had it conformed; such partial acceptance shall be administered through a Change Notice; 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 15.1**.

9.5 Acceptance. Acceptance ("**Acceptance**") of each Software Deliverable (subject, where applicable, to the State's right to Integration Testing) and Aggregate Software will occur on the date that is the earliest of:

(a) the State's delivery of a notice accepting such Software Deliverable under **Section 9.2(b)**, or **Section 9.2(c)(ii)**;

(b) solely if the State is responsible for performing such Acceptance Tests or Integration Testing, five (5) Business Days after expiration of the Testing Period if the State has not notified Contractor of one or more Non-Conformities prior to such date; or

(c) solely if Contractor is responsible for performing such Acceptance Tests or Integration Tests, the number of days specified in **Section 9.2(c)** after the State receives Contractor's Notice of Completion, if the State fails to respond to such Notice of Completion prior to such date.

10. Training; Maintenance and Support.

10.1 Training. With respect to all Software, Contractor will provide the State with training as set forth in the Statement of Work. All training set forth in the Statement of Work will be provided at the Fees set forth in the Statement of Work, it being acknowledged and agreed that the development and other Fees include full consideration for such services. The State may request, and if so requested, Contractor must provide on a timely basis, additional training at the rates specified in the Pricing Schedule set forth in **Schedule D**.

10.2 Maintenance and Support. With respect to all Software, Contractor will provide the State with the Maintenance and Support Services set forth in **Schedule C**. Such Maintenance and Support Services will be provided:

(a) free of charge, during the Warranty Period, it being acknowledged and agreed by the parties that the development and other Fees include full consideration for such Services during such period; and

(b) thereafter, for so long as the State elects to receive Support and Maintenance Services for such Software, in consideration of the State's payment of the Support Fees as determined in accordance with the rates set forth in the Maintenance and Support Schedule.

11. Fees.

11.1 Fees. Subject to all terms and conditions set forth in this **Section 11** and Contractor's performance of Services in accordance with the Statement of Work and the State's Acceptance of the applicable Deliverables, the State will pay the fees set forth in the Statement of Work ("**Fees**"). All such Fees will be determined in accordance with the fees, billing rates, and discounts ("**Pricing**") set forth in **Schedule D** (the "**Pricing Schedule**").

11.2 Firm Pricing. The Pricing set forth in the Pricing Schedule is firm and may not be modified during the Term of the Statement of Work.

11.3 Administrative Fee And Reporting.

(a) The Contractor must remit an administrative fee of 1% on all payments remitted 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). 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.

(b) Itemized purchasing activity reports should be mailed to DTMB-Procurement and the administrative fee payments shall be made by check payable to the State of Michigan and mailed to:

The Department of Technology, Management and Budget
Financial Services – Cashier Unit

Lewis Cass Building
320 South Walnut St.
P.O. Box 30681
Lansing, MI 48909

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

12. Invoices and Payment.

12.1 Invoices. 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 hard copy or 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 to which it relates, in such manner as is required by the State;

(b) list each Fee item separately;

(c) include sufficient detail as reasonably requested by the State 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; and

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

12.2 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 that the invoice was properly rendered. The State may withhold from payment any amount disputed by the State in good faith, pending resolution of the dispute, provided that the State:

(a) timely pays all amounts not subject to dispute;

(b) notifies Contractor of the dispute prior to the due date, 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 to resolve the dispute promptly through the Dispute Resolution Procedure; and

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

Contractor shall continue performing its obligations in accordance with the Statement of Work notwithstanding any such dispute or actual or alleged nonpayment that is the subject of the dispute, pending its resolution.

12.3 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.

12.4 Right of Set Off. 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 the Statement of Work.

12.5 Payment Does Not Imply Acceptance. The making of any payment by the State, or Contractor's receipt of payment, will in no way affect the responsibility of Contractor to perform the Services in accordance with this Contract, and will not imply the State's acceptance of any Services or Deliverables or the waiver of any warranties or requirements of this Contract.

13. Intellectual Property Rights.

13.1 State Ownership of Work Product. Except as set forth in **Section 13.3**, or as mandated by federal law if federal funds will be used to pay Fees under the Statement of Work, the State is and will be the sole and exclusive owner of all right, title, and interest in and to all Work Product, including all Intellectual Property Rights. In furtherance of the foregoing, subject to **Section 13.3**:

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

(b) to the extent any 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 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 Work Product.

13.2 Further Actions. Contractor will, and will cause the Contractor Personnel to, take all appropriate action and execute and deliver all documents, necessary or reasonably requested by

the State to effectuate any of the provisions or purposes of **Section 13.1**, or otherwise as may be necessary or useful for the State to prosecute, register, perfect, record, or enforce its rights in or to any Work Product or any Intellectual Property Right therein.

13.3 Background Technology, Approved Third-Party Materials, and Open-Source Components.

(a) Contractor is and will remain the sole and exclusive owner of all right, title, and interest in and to the Background Technology or any enhancements or modifications made to such Background Technology, including all Intellectual Property Rights therein, subject to the license granted in **Section 14.1**.

(b) Ownership of all Approved Third-Party Materials, and all Intellectual Property Rights therein, is and will remain with its respective owners, subject to any express licenses or sublicenses granted to the State under this Contract.

(c) Ownership of all Open-Source Components, and all Intellectual Property Rights therein, is and will remain with its respective owners, subject to the State's rights under the applicable Open-Source Licenses.

13.4 State Materials. The State will remain the sole and exclusive owners of all right, title, and interest in and to State Materials, including all Intellectual Property Rights therein. Contractor will have no right or license to, and will not, use any State Materials except solely during the Term of this Contract for which they are provided to the extent necessary to perform the Services and provide the Work Product to the State. All other rights in and to the State Materials are expressly reserved by the State.

14. Licenses.

14.1 Background Technology License. Contractor hereby grants to the State such rights and licenses with respect to the Background Technology that will allow the State to use and otherwise exploit perpetually throughout the universe for its business uses the Work Product, without incurring any fees or costs to Contractor (other than the Fees set forth under this Contract) or any other Person in respect of the Background Technology. In furtherance of the foregoing, such rights and licenses will:

(a) be non-exclusive, non-transferrable, non-sublicensable, irrevocable, perpetual, fully paid-up and royalty-free;

(b) include the rights for State contractors to use the Background Technology for the State's business uses; and

(c) include the rights to use, reproduce, perform (publicly or otherwise), display (publicly or otherwise), modify, improve, create Derivative Works of, import, make, and have

made, the Background Technology, including all such modifications, improvements and Derivative Works thereof, solely as part of, or as necessary to use the Work Product.

14.2 State Materials. The State hereby grants to Contractor the limited, royalty-free, non-exclusive right and license to State Materials solely as necessary to incorporate such State Materials into, or otherwise use such State Materials in connection with creating, the Work Product. The term of such license will commence upon the State's delivery of the State Materials to Contractor, and will terminate upon the State's acceptance or rejection of the Work Product to which the State Materials relate. Subject to the foregoing license, the State reserves all rights in the State Materials. All State Materials are considered Confidential Information of the State.

14.3 Approved Third-Party Materials.

(a) Prior to the delivery date for any Deliverables under the Statement of Work, Contractor will secure for the State, at Contractor's sole cost and expense, such rights, licenses, consents and approvals for any Approved Third-Party Materials, that will allow the State to use and otherwise exploit perpetually throughout the universe for all or any purposes whatsoever the Work Product, without incurring any fees or costs to any Third-Party (other than the Fees set forth under this Contract) in respect of the Approved Third-Party Materials.

(b) All royalties, license fees, or other consideration payable in respect of such licenses are included in the Fees specified in the Statement of Work. Any additional amounts will be the sole responsibility of Contractor.

14.4 Open-Source Components. Any use of the Open-Source Components by the State will be governed by, and subject to, the terms and conditions of the applicable Open-Source Licenses.

15. Termination, Expiration, Transition.

15.1 State Termination for Cause.

(a) The State may terminate this Contract, the Maintenance and Support Services and the Statement of Work, for cause, in whole or in part, effective upon written notice to the Contractor, if Contractor materially breaches this Contract, Maintenance and Support Services or the Statement of Work, and such breach:

(i) is incapable of cure;

(ii) is a repeated breach; or

(iii) being capable of cure, remains uncured for thirty (30) calendar days after the Contractor receives written notice thereof.

Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material

(b) The State may terminate this Contract, the Maintenance and Support Services, or the Statement of Work for cause, in whole or in part, effective upon written notice to the Contractor if Contractor: (i) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor.

(c) If the State terminates this Contract under this **Section 15.1**, the State will issue a termination notice specifying whether Contractor must: (i) cease performance immediately, if the State terminates under subsections (a)(i), (a)(ii), or (b) above, (ii) cease performance if the breach is not cured within thirty (30) calendar days, if the State is terminating under subsection (a)(iii), or (iii) continue to perform for a specified period not to exceed sixty (60) calendar days. 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 15.2**.

(d) The State will only pay for (i) amounts due to Contractor for Services and Deliverables accepted by the State on or before the date Contractor is instructed to cease performance under subsection (c) above, (ii) any holdbacks retained by the State that are associated with already accepted Services and Deliverables, and (iii) work in process on a pro rata basis, provided that such work in process is not the reason for the State's termination. All costs owed to Contractor are 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. The 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 that would not have been incurred if Contractor had completed the Contract.

15.2 <u>State Termination for Convenience</u>. The State may terminate this Contract in whole or in part on thirty (30) calendar days' notice, 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 at the end of the thirty (30) day notice, or (b) continue to perform in accordance with **Section 15.4**. If the State terminates this Contract for convenience, the State will pay for all (a) accepted Services and Deliverables, (b) work in process on a pro rata basis, (c) any holdbacks retained by the State that are associated with already accepted Services and Deliverables, and (d) all reasonable costs for State approved Transition Responsibilities. Notwithstanding the foregoing, if the State terminates this Contract for non-appropriation, the State will pay the Contractor for the above costs only to the extent funds allocated to the Statement of Work are available.

15.3 <u>Termination by Contractor</u>. If the State breaches a material provision of this Contract, then the Contractor will provide the State with written notice of the breach and a time period (not less than thirty (30) calendar days) to cure the breach. The Contractor may terminate this

Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under this Contract, (ii) breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the material breach within the time period specified in a written notice of breach.

15.4 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 sixty (60) 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 (on a fixed price or time and material basis, depending on the Services provided); (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Services and Deliverables 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 Materials and State Data; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed Deliverables prepared under this Contract as of the Contract termination or expiration date, provided Contractor has received full payment for such Deliverable; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, the "**Transition Responsibilities**"). This Contract is automatically extended through the end of the Transition Period.

15.5 Effect of Expiration or Termination.

(a) Upon termination or expiration of this Contract for any reason:

(i) Contractor will be obligated to perform all Transition Responsibilities specified in **Section 15.4**.

(ii) All licenses granted to Contractor in the State Materials and State Data will immediately and automatically also terminate. Contractor must promptly return to the State all State Materials and State Data not required by Contractor for its Transition Responsibilities, if any.

(iii) Contractor will (A) return to the State all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the State's Confidential Information, subject to Section 22.5 (B) permanently erase the State's Confidential Information from its computer systems and (C) certify in writing to the State that it has complied with the requirements of this **Section 15.5(a)(iii)**, in each case to the extent such materials are not required by Contractor for Transition Responsibilities, if any.

(b) No expiration or termination of this Contract will affect the State's rights in any of the Deliverables that have already been paid for by the State.

15.6 Survival. This **Section 15** survives termination or expiration of this Contract.

16. 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 thirty (30) 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 thirty (30) calendar 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 the Statement of Work. The parties will agree upon an equitable adjustment through the Change Control Process under **Section 2.3** to (i) extend the Milestone Dates under the Statement of Work, and (ii) adjust Contractor Personnel staffing requirements**,** if as a result of the Stop Work Order, Contractor is unable to timely meet all or any remaining Milestones under the Statement of Work or its staffing of the project is affected by such Stop Work Order. Notwithstanding anything contained in this **Section 16**, Contractor shall use its commercially reasonable efforts to meet the Milestone Dates specified in the Statement of Work without any extension.

17. Contractor Representations and Warranties.

17.1 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.

17.2 Bid 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, including Contractor's Bid Response, 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; and

(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.

17.3 Software and Service. Contractor represents and warrants to the State that:

(a) It will perform all Services in a professional and workmanlike manner in accordance with 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;

(b) It is in compliance with, and will perform all Services in compliance with, all applicable Law;

(c) The State will receive good and valid title to the Software, free and clear of all encumbrances and liens of any kind;

(d) When delivered and installed by Contractor, the Software will not contain any Harmful Code;

(e) The Software will not contain, or operate in such a way that it is compiled with or linked to, any Open-Source Components other than Approved Open-Source Components;

(f) The Software, including all updates, upgrades, new versions, new releases, enhancements, improvements and other modifications thereof, but excluding components comprising State Materials, Approved Third-Party Materials, and Open-Source Components, is or will be the original creation of Contractor;

(g) As delivered, installed, specified, or approved by Contractor and used by the State or any Third Party authorized by the State, the Software: (i) will not infringe, misappropriate, or otherwise violate any Intellectual Property Right or other right of any third party; and (ii) will comply with all applicable Laws; and

(h) No expiration or loss of any patent or application for patent rights in the Software is pending, or, to Contractor's knowledge after reasonable inquiry, threatened or reasonably foreseeable, and Contractor has no reason to believe that any claims of any such patent or patent

application are or will be invalid, unenforceable, fail to issue, or be materially limited or restricted beyond the current claims, except for patent rights expiring at the end of their statutory term.

17.4 Performance Warranty and Limited Remedy.

(a) Contractor warrants that during the Warranty Period:

(i) all Software will be, and as installed in the Operating Environment (or any successor thereto) and used in accordance with the Documentation will function in all respects, in material conformity with this Contract and the Specifications and Documentation; and

(ii) any media on which any Software Deliverable is delivered will be free of damage or defect in design, material, and workmanship, and will remain so under ordinary use as contemplated by this Contract and the Specifications and, with respect to the Software component, the Documentation.

(b) If the Contractor breaches any of the warranties set forth in **Section 17.4(a)** Contractor will, upon written notice from the State and at Contractor's sole cost and expense, remedy such breach in accordance with the Maintenance and Support Schedule or Statement of Work, as applicable, including the time periods set forth in such document. In the event Contractor fails to remedy such breach on a timely basis, the State will be entitled to such remedies as are specified in the Maintenance and Support Schedule or as may otherwise be available under this Contract, at law or in equity for breach of its Maintenance and Support obligations. Nothing in this **Section 17.4(b)** limits the State's right to indemnification under **Section 18.1**.

17.5 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, CONTRACTOR DOES NOT MAKE OR GIVE ANY REPRESENTATION OR WARRANTY OR CONDITION OF ANY KIND, WHETHER SUCH REPRESENTATION, WARRANTY, OR CONDITION BE EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE OR ANY REPRESENTATION, WARRANTY OR CONDITION FROM COURSE OF DEALING OR USAGE OF TRADE.

17.6 State hereby represents and warrants that it has all necessary right and title to all State Material to allow Contractor to perform its Services hereunder.

18. Indemnification.

18.1 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 losses, liabilities, damages, reasonable costs, reasonable attorney fees, and expenses (including those required to establish the right to indemnification), to the extent arising out third party claims or actions of or relating to: (a) any infringement, misappropriation, or other violation of any Intellectual Property Right of any Third

Party in connection with any Service or Deliverable provided under the Statement of Work; and (b) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to negligent or more culpable 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).

18.2 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 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. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim. Any litigation activity on behalf of the State or any of its subdivisions, under this **Section 18**, 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.

18.3 Infringement Remedies.

(a) The remedies set forth in this **Section 18.3** 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 commercially reasonable 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 refund to the State all amounts paid by the State in respect of such Allegedly Infringing Materials and any other

aspects of the Aggregate Software provided under the Statement of Work for the Allegedly Infringing Materials that the State cannot reasonably use as intended under this Contract; and

(d) If Contractor directs the State to cease using any Software under **Section 18.3(c)**, the State may terminate this Contract for cause under **Section 15.1**.

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

(i) Use of the Software for other than its intended use, as reflected in the Statement of Work or Documentation;

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

(iii) Modification of the Software by the State without the prior knowledge and approval of Contractor; or

(iv) Failure to use modifications or enhancements made available at no cost to the State by Contractor, provided Contractor has given the State written notice of such modification or enhancement, and such modification or enhancement will not degrade the Software performance,

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

19. Liquidated Damages.

(a) 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 may interfere with the proper and timely implementation of the Software, to the loss and damage of the State. Further, the State may incur 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 will be described in the Statement of Work, and that these amounts are reasonable estimates of the State's damages in accordance with applicable Law.

(b) 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.

(c) 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 15.1**.

(d) Amounts due the State as liquidated damages may be set off against any Fees payable to Contractor under the Statement of Work or the State may bill Contractor as a separate item and Contractor will promptly make payments on such bills.

(e) Contractor's liability for liquidated damages assessed under the Statement of Work shall not exceed 10% of the amount of the Fees for the particular Deliverable that is subject to the liquidated damages claim.

20. Damages Disclaimers and Limitations.

(a) Disclaimer of Damages. NEITHER PARTY WILL 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, PUNITIVE, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES.

(b) Limitation of Liability. IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY 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 SPECIFIED IN THE STATEMENT OF WORK.

(c) Exceptions. Subsections (a) (Disclaimer of Damages) and (b) (Limitation of Liability) above, shall not apply to:

(i) Contractor's obligation to indemnify under **Section 18.1** of this Contract**;**

(ii) Contractor's obligations under **Section 21.5** of this Contract (Compromise of State Data), subject to the Security Breach Indemnity Cap; and

(iii) damages arising from either party's recklessness, bad faith, or intentional misconduct.

21. State Data.

21.1 Ownership. The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) the State's data collected, used, processed, stored, or generated as the result of the Services; (b) 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, (c) 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 of 1996, as amended, and including 45 C.F.R. Part 160, Part 162 and Part 164 and any other regulations promulgated thereunder, all as of the effective date of this Contract ("**HIPAA**"). 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 21.1** survives termination or expiration of this Contract.

21.2 Contractor Use of State Data. 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 confidence, using such degree of care as is 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 21.2** survives termination or expiration of this Contract.

21.3 Extraction of State Data. Contractor must, within three (3) Business Days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of State Data in the format specified by the State.

21.4 Backup and Recovery of State Data. Contractor's backup and recovery obligations will be set forth in the Statement of Work.

21.5 Compromise of State Data. In the event of any Contractor act, error or omission, negligence, misconduct, or breach by Contractor that compromises 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 in possession or control of Contractor, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than within one (1) business day 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) 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 (15) calendar days after the State provides contact information to Contractor of the affected individuals; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, offer 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 twelve (12) 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) reimburse the State for all reasonable costs incurred by the State in the investigation and remediation of such occurrence, including but not limited to all legal fees, audit costs, fines, and other fees imposed by regulatory agencies or contracting partners as a result of the occurrence; (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 third party 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 Contractors breach of this section; and (h) provide to the State a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to reduce the risk a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, 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 by giving Contractor written notice that it elects to review such notice. Notwithstanding anything to the contrary set forth in this Section or any other provision of this Contract, the aggregate liability of Contractor for damages under this Section shall not exceed the greater of One Million Dollars ($1,000,000.00) or the maximum amount of Fees specified in the Statement of Work (the "**Security Breach Indemnity Cap**"). This **Section 21.5** survives termination or expiration of this Contract for so long as Contractor has possession, custody or control of State data.

22. 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 22** survives termination or expiration of this Contract.

22.1 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)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.

22.2 Obligation of Confidentiality. The parties agree to hold all Confidential Information in 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; (c) Contractor obligates the Permitted Subcontractor in a written contract to maintain the State's Confidential Information in confidence; (d) as permitted under the Statement of Work; and (e) as required by law, regulation or court order, provided that to the extent a receiving party is required to disclose confidential information pursuant to this subsection, the receiving party shall provide the furnishing party with notice of the legal request within one (1) Business Day of receipt, and assist the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party. 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 22.2**.

22.3 Cooperation to Prevent Disclosure of Confidential Information. Each party must use its reasonable 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 promptly 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 this **Section 22**. Each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

22.4 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.

22.5 Surrender of Confidential Information upon Termination. Upon termination or expiration of this Contract or a Statement of Work, in whole or in part, each party must, within five (5) calendar 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; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. If Contractor or the State determine that the return of any non-State Data Confidential Information is not feasible, such party must destroy the non-State Data Confidential Information and certify the same in writing within five (5) calendar days from the date of termination to the other party. Notwithstanding anything herein to the contrary, Contractor shall have the right to retain copies of non-State Data Confidential Information, and any summaries, analyses, notes, or extracts prepared by Contractor which are based on or contain portions of such Confidential Information to the extent necessary to evidence performance of the Services, provided that Contractor retains such copies in accordance with its confidentiality obligations hereunder.

23. Data Privacy and Information Security.

23.1 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 appropriate physical, technical, administrative, and organizational safeguards, that is reasonably designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or confidentiality 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.

23.2 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.

23.3 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.

23.4 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 23**.

24. HIPAA Compliance*.* If the Contractor will have access to personal health information (PHI), which will be specified in the final Statement of Work, 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.

25. Payment Card Industry Data Security Standard. If the Contractor processes, transmits, or stores credit/debit cardholder data on behalf of the State, which will be specified in the final Statement of Work, it must: (a) treat cardholder data as confidential, including after Contract termination or expiration; (b) adhere to the Payment Card Industry Data Security Standards (PCI DSS) and applicable DTMB policies; (c) notify the Contract Administrator, within twenty-four (24) hours of discovery, of all failures to comply with the PCI DSS, DTMB polices, or any breach in security where cardholder data has been compromised and (i) conduct a security review, (ii) obtain a forensic report validating compliance with the current PCI Data Security Standards, and (iii) provide the forensic report to the State within two weeks of completion; (d) provide the Contract Administrator with an annual Attestation of Compliance or a Report on Compliance; and (e) when no longer needed, properly dispose of cardholder data in compliance with the PCI DSS and DTMB policy. At the State's request, Contractor must provide full cooperation to the State, a PCI representative, or a State approved third party to conduct a security review. Contractor is responsible for all costs associated with a breach.

26. CEPAS Electronic Receipt Processing Standard. All electronic commerce applications that allow for electronic receipt of credit or debit card and electronic check (ACH) transactions must be processed via the State's Centralized Electronic Payment Authorization System (CEPAS).

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

27.1 Right of Audit. Upon written notice to Contractor, the State or its designee may audit Contractor to verify compliance with the Statement of Work. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Statement of Work (other than Contractor's internal costs to provide services) through the Term of the Statement of Work and for seven (7) years after the latter of termination, expiration, or final payment under the Statement of Work 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.

27.2 Right of Inspection. Within ten (10) calendar days of providing written 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 the Statement of Work. 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 the Statement of Work must be paid or refunded within forty-five (45) calendar days.

27.3 Application. This **Section 27** applies to Contractor, any Affiliate, and any Permitted Subcontractor that performs Services in connection with this Contract.

28. Insurance Requirements.

28.1 Except as may be set forth in the Statement of Work, 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 Permitted 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, unless the State agrees otherwise in writing	Contractor must have its policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) for a claims-made policy, provide 3 years of tail coverage.
Motor Vehicle 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: $100,000 Each Accident	

$100,000 Each Employee by Disease $500,000 Aggregate Disease.	
Cyber Liability Insurance	
Minimal Limits: $1,000,000 Each Occurrence $1,000,000 Annual Aggregate	Contractor must have its policy cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.
Professional Liability (Errors and Omissions) Insurance	
Minimal Limits: $2,000,000 Each Occurrence $2,000,000 Annual Aggregate Deductible Maximum: $50,000 Per Loss, unless the State agrees otherwise in writing	

28.2 If Contractor's policy contains limits higher than the minimum limits, the State is entitled to coverage to the extent of the higher limits, subject to Contractor's limitation of liability under **Section 20(b)**. 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.

28.3 Contractor must: (a) provide insurance certificates to the State's Contract Administrator, containing the Contract number, at Contract formation and within twenty (20) calendar days of the expiration date of the applicable policies; (b) require that Permitted Subcontractors maintain the required insurances contained in this Section; (c) notify the State's Contract Administrator within ten (10) 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. Dispute Resolution.

29.1 Unless otherwise specified in the Statement of Work, the parties will endeavor to resolve any Contract dispute in accordance with **Section 29**. 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(s). The responding party's Project Manager(s) 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.

29.2 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 29** does not limit either party's right to terminate this Contract.

30. Miscellaneous.

30.1 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 Work Product is 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 Work Product. 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 Work Product, 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.

30.2 Conflicts and Ethics. Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This **Section 30.2** applies to Contractor, any Affiliate, and any Permitted Subcontractor that Performs Services in connection with this Contract.

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

30.4 Nondiscrimination. Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., Contractor and its Permitted 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, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.

30.5 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.

30.6 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.

30.7 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.

30.8 Force Majeure. Neither party will be liable or responsible to the other party, nor will be deemed to have defaulted under or breached this Contract, for any failure or delay in fulfilling or performing any term of this Contract, when and to the extent such failure or delay is caused by:

(a) acts of God;

(b) flood, fire or explosion;

(c) war, terrorism, invasion, riot, or other civil unrest;

(d) embargoes or blockades in effect on or after the date of this Contract;

(e) national or regional emergency; or

(f) 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: (i) such event is outside the reasonable control of the affected party; (ii) the affected party provides prompt notice to the other party, stating the period of time the occurrence is expected to continue; and (iii) the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure event.

30.9 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 shall have authority to contract for or bind the other party in any manner whatsoever.

30.10 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.

30.11 Website Incorporation. The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.

30.12 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 30.12**):

If to Contractor: Dewpoint
1921 East Miller, Suite B
Lansing, MI 48911
Email: Michelle.Massey@dewpoint.com
Attention: Michelle Massey, Vice President Business Operations

If to State: DTMB Procurement
PO Box 30026
525 West Allegan
Lansing, Michigan 48909
Email: zukerw@michigan.gov
Attention: Whitnie Zuker, IT Buyer

Notices sent in accordance with this **Section 30.12** 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 email (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) calendar day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

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

30.14 Entire Contract. This Contract, together with all Schedules, Exhibits, and the Statement of Work constitutes the sole and entire agreement of the parties to this Contract with respect to the subject matter of this Contract and supersedes all prior and contemporaneous understandings, 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, Schedules, and the Statement of Work; (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.

30.15 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. However, Contractor may assign the Contract to an Affiliate so long as (a) Contractor provides the State thirty (30) days prior written notice of such assignment, (b) the Affiliate is adequately capitalized and can provide adequate assurances that the Affiliate can perform the Contract and applicable Statement of Work, and (c) a Change Notice will be executed by the parties if necessary under DTMB contracting policies. No delegation or other transfer will relieve Contractor of any of its obligations or performance under this Contract. Any purported assignment, delegation, or transfer in violation of this **Section 30.15** is void.

30.16 No Third-Party Beneficiaries. This Contract is for the sole benefit of the parties and their respective successors and permitted assigns. Nothing in this Contract, 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.

30.17 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 an authorized Representative of both parties. 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.

30.18 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 must 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 be consummated as originally contemplated to the greatest extent possible.

30.19 Equitable Relief. Each party acknowledges that a breach by a party of **Section 13** (Intellectual Property Rights; Ownership), **Section 21** (State Data), or **Section 22** (Confidential Information) may cause the non-breaching party immediate and irreparable harm, for which an award of damages would not be adequate compensation. Each party agrees that, in the event of such breach or threatened breach, the non-breaching party will be entitled to seek equitable relief, including in the form of orders for preliminary or permanent injunction, specific performance, and any other relief that may be available from any court. Such remedies will not be deemed to be exclusive but may be in addition to all other remedies available under this Contract, at law or in equity, subject to any express exclusions or limitations in this Contract to the contrary.

30.20 Counterparts. This Contract may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same Contract. A signed copy of this Contract delivered by email or other means of electronic transmission (to which a signed PDF copy is attached) will be deemed to have the same legal effect as delivery of an original signed copy of this Contract.

EXHIBIT 1

[Initial Statement of Work]

SCHEDULE A

[Final Statement Of Work]

SCHEDULE B

[Business and Technical Requirements Specifications]

SCHEDULE C

[Maintenance and Support Services]

SCHEDULE D

[Pricing]