

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET
 PROCUREMENT

525 W. ALLEGAN STREET
 LANSING, MI 48933

P.O. BOX 36626
 LANSING, MI 48909

CHANGE NOTICE NO. 2
 to
 CONTRACT NO. 071B4300150
 between
 THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Emerge Knowledge Design, Inc. 401-250 McDermot Ave. Winnipeg MB, R3B 0S5	Jennifer Peters	jen@emergeknowledge.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	204-772-7239	*****2433

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DEQ	Steven Noble	517-284-6589	Nobles4@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Jarrod Barron	(517) 284-7045	BarronJ1@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Re-Trac Connect			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
September 11, 2014	September 10, 2015	3 - 1 Year	September 10, 2016
PAYMENT TERMS		DELIVERY TIMEFRAME	
n/a		n/a	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
n/a			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1 year	<input type="checkbox"/>		September 10, 2017
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$ 113,887.00		\$ 6,120.00	\$ 120,007.00	
DESCRIPTION: Effective March 16, 2016:				
1. the State exercises the second option year, utilizing \$33,103.00 of existing contract funds to cover the Leader Account and EcoPoint subscription costs detailed in the original contract and 2. the parties add \$6,120.00 to cover the configuration services detailed in the attached Statement of Work. All other terms, conditions, specifications, and pricing not modified herein remain the same. Per Contractor, Agency and DTMB Procurement agreement.				

STATEMENT OF WORK Configurations and Training

BACKGROUND:

1. This Statement of Work is governed by the terms and conditions of Contract 071B4300150. The objective is to achieve new surveys and reports through system configuration and provide additional training. Contractor will not need to develop new source code as part of this effort.

2.

SCOPE OF WORK, TASKS AND DELIVERABLES:

3. Contractor will:

1. Configure the software to produce a General Information Survey;
2. Configure the software to produce a Tonnage Reporting Survey;
3. Configure the software to produce an Analytical Report; and
4. Provide web-based training sessions.

4.

LEVEL OF EFFORT AND PROJECT SCHEDULE:

Program Requirements	Dedicated Hours	Timeline
Program Setup	8	May 16, 2016 to September 1, 2016
Surveys: The following surveys as described in Part 175 Reporting Form: <ol style="list-style-type: none"> 1. General Information Survey 2. Tonnage Reporting Survey 	24	May 16, 2016 to September 1, 2016
Analytical Report: One custom analytical report to aggregate numbers for tons of each recyclable material shipped off-site and grand total of all materials reported shipped off site as described in Part 175 Reporting Form.	32	May 16, 2016 to October 1, 2016
Training: One 1.5 hour web-based training session for facilities will be held on a mutually agreeable date, as per Michigan DEQ's schedule requirements. An additional 1.5 hours of dedicated web-based training for Michigan Program Manager to be held throughout the program buildout. Total dedicated hours include training preparation and follow up.	6	TBD by mutual agreement, but to be completed before September 10, 2016
Ongoing Client Services for the Term: Production support hours for the new surveys and the report generation after the system has been built.	30	Ongoing during the current term (up to September 10, 2016).
Total	100	

ACCEPTANCE CRITERIA:

Deliverables will not be considered complete until the DEQ Project Manager has formally accepted them. The following acceptance criteria apply to this project's deliverables:

1. General Information Survey

The system will generate a survey that:

- a. Provides registration information as required under Part 175
- b. Allows mandatory reporting companies to register
- c. Allows voluntary reporting companies to register
- d. Allows the DEQ to generate the necessary reports to complete its annual reporting as required by Part 175 of Act 451 as amended.

2. Tonnage Reporting Survey

The system will generate a survey that:

- a. Collects recycling volume data from required reporting companies
- b. Collect recycling volume data from voluntary reporters
- c. Allows the DEQ to generate the necessary reports to complete its annual reporting as required under Part 175 of Act 451. This report (survey) will be provided as an annual report and as four (4) quarterly reports. Reporters will have the option to submit their data annually or quarterly. However both versions of the report, whether annual or quarterly, will have the same data fields – i.e. they will be the exact same report (survey).

3. Analytical Report

The system allow the DEQ to generate custom analytical reports to meet the annual reporting requirements contained in statute. Examples:

- a. Aggregate recycling amounts for 7 different types of material
- b. Statewide recycling rate
- c. Recycling rates on a regional basis
- d. Recycling rate trends for various types of material
- e. Similar reports that separate data provided by voluntary and required reporting entities.

4. Web-Based Training Session

Contractor has provided:

- a. One 1.5-hour web-based training session that for facilities on a mutually agreeable date, the objective of which is to train required and voluntary reporting entities how to register and submit data to the system
- b. 1.5-hours of dedicated web-based training for the State Program Manager will be provided throughout the program buildout, the objective of which is to beta test and demonstrate the constructed system in preparation for roll out to the regulated community.

PROJECT CONTROL AND REPORTS:

Per existing contract.

PROJECT CONTACTS:

Per existing contract.

LOCATION WHERE THE WORK IS TO BE PERFORMED:

Contractor will perform all work remotely.

EXPECTED WORK HOURS AND CONDITIONS:

Per existing contract.

PAYMENT:

This project will require 100 hours of effort. Under Contract SOW section 1.601.A.2, the State has already paid for 48 Professional Services hours as part of its Year 2 subscription. The price of the additional needed 52 hours is \$6,120.00 firm-fixed. Payment will be made in one lump sum after the State formally accepts all deliverables. Cost is broken down as follows (rates per existing Contract):

Additional Professional Services	Dedicated Hours	Professional Services Fees
Solutions Manager	36	\$ 4,680.00
Computer Programmer	16	\$ 1,440.00
Total:	52	USD \$6,120.00

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. 071B4300150
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Emerge Knowledge Design Inc 401-250 McDermot Ave. Winnipeg, MB R3B 0S5	Jennifer Peters	jen@emergeknowledge.com
	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
	(204) 772-7239 Ext. 805	2433

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER	DEQ	Steven Noble	517-284-6589	Nobles4@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Jarrod Barron	517-284-7045	Barronj1@michigan.gov

CONTRACT SUMMARY				
DESCRIPTION: RE-TRAC Connect				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
September 11, 2014	September 10, 2015	3, one year	September 10, 2015	
PAYMENT TERMS	F.O.B.	SHIPPED TO		
N/A	N/A	N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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 EXTENSION/OPTION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	One year	September 10, 2016
CURRENT VALUE		VALUE/COST OF CHANGE NOTICE	ESTIMATED REVISED AGGREGATE CONTRACT VALUE	
\$113,887.00		\$0.00	\$113,887.00	

DESCRIPTION:

Effective April 16, 2015, the State exercises the first option year. This is a zero-dollar change notice utilizing \$33,103 of existing contract funds to renew subscriptions to the Re-TRAC Connect Leader Account and Re-TRAC Connect EcoPoint Directory Account at the firm fixed prices established in the original contract.

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

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

**NOTICE
 OF
 CONTRACT NO. 071B4300150
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Emerge Knowledge Design Inc. 401-250 McDermot Ave. Winnipeg, MB R3B 0S5	Rick Penner	rick@emergeknowledge.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(204) 772-7239	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DEQ	Steven Noble	517-284-6589	Nobles4@michigan.gov
BUYER:	DTMB	Jarrold Barron	517-284-7045	barronj@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION:			
RE-TRAC Connect			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
1 year	September 11, 2014	September 10, 2015	3, one year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:		\$113,887.00	

THIS IS NOT AN ORDER: Orders for delivery will be issued directly by the Department of Technology, Management & Budget through the issuance of a Purchase Order Form.



STATE OF MICHIGAN
Department of Technology, Management and Budget
Procurement

Contract No. 071B4300150
Michigan Department of Technology, Management and Budget
DEQ Re-TRAC Connect™ Leader Account

Buyer Name: Jarrod Barron
Telephone Number: 517-284-7045
E-Mail Address: barronj1@michigan.gov



Software as a Service Agreement

This Software as a Service (SaaS) Agreement (the “**Agreement**”), dated September 11, 2014 (the “**Effective Date**”), is by and between the Michigan Department of Technology, Management and Budget, on behalf of the Michigan Department of Environmental Quality (collectively, the “**State**”) and Emerge Knowledge Design Inc., a Manitoba, Canada corporation with offices located at 401-250 McDermot Ave., Winnipeg, Manitoba, Canada, R3B 0S5 (“**Contractor**”).

Definitions.

“**Accept**” has the meaning set forth in **Section 4.2(b)**.

“**Acceptance**” has the meaning set forth in **Section 4.2(b)**.

“**Action**” has the meaning set forth in **Section 13.1**.

“**Actual Uptime**” means the total minutes in the Service Period that the Hosted Services are Available.

“**Agreement**” has the meaning set forth in the preamble, including the Schedules to this Agreement, as it or they may be amended or supplemented from time to time as agreed upon in writing between the State and the Contractor.

“**Allegedly Infringing Features**” has the meaning set forth in **Section 13.3(b)(ii)**.

“**Authorized Users**” means all Persons authorized by the State to access and use the Services through the State’s account under this Agreement, subject to the maximum number of users specified in the applicable Statement of Work.

“**Availability**” has the meaning set forth in **Section 5.1**.

“**Availability Requirement**” has the meaning set forth in **Section 5.1**.

“**Available**” has the meaning set forth in **Section 5.1**.

“**Base License Fee**” means, for the applicable year of the Term, the Re-TRAC Connect™ Leader Account Software License base license fee of \$18,904.00 USD per annum and the Re-TRAC Connect™ Directory Account Software License base license fee of \$1,000.00 USD per annum set out in Schedule D Statement of Work in **Section 1.601 Compensation and Payment**.

“**Change Notice**” has the meaning set forth in **Section 2.2**.

“**Confidential Information**” has the meaning set forth in **Section 10.1**.

“**Contractor**” has the meaning set forth in the preamble.

“**Contractor Business Day**” means any day of the week other than Saturday, Sunday, a statutory holiday in the Province of Manitoba, Remembrance Day (November 11), Boxing Day (December 26), and the August Civic



Holiday (1st Monday in August). The eight general (statutory) holidays in the Province of Manitoba include: 1. New Year's Day (Jan 1), 2. Louis Riel Day (3rd Monday in February), 3. Good Friday, 4. Victoria Day (the Monday preceding May 25), 5. Canada Day (July 1), 6. Labour Day (1st Monday in September), 7. Thanksgiving Day (2nd Monday in October), and 8. Christmas Day (December 25).

“Contractor Business Hours” means from 8:30 a.m. to 5:00 p.m. Central Standard Time/Central Daylight Time (9:30 a.m. to 6:00 p.m. Eastern Standard Time/Eastern Daylight Time) each Contractor Business Day.

“Contractor Personnel” means all employees of Contractor involved in the performance of Services.

“Contractor Security Officer” has the meaning set forth in **Section 2.5(a)**.

“Contractor Solutions Manager” has the meaning set forth in **Section 2.5(a)**.

“Contractor Systems” has the meaning set forth in **Section 11.3**.

“Critical Service Error” has the meaning set forth in **Section 6.4(a)(i)**.

“Documentation” means all generally available documentation relating to the Services, including all technical information, design documents, databased layouts, test materials, notes, user manuals, operating manuals and other instructions, specifications, documents and materials, in any form or media, supplied by the Contractor that describe any component, feature, requirement or other aspect of the Services, including any functionality, testing, operation or use thereof.

“Effective Date” has the meaning set forth in the preamble.

“Enhancements” means all updates, upgrades, bug fixes, patches, additions, modification or other improvement to the Service Software (including without limitation any new releases of the Service Software) provided or made available by the Contractor and all changes to the Source Code and Documentation as a result of such Enhancement.

“Fees” has the meaning set forth in **Section 8.1**.

“Force Majeure Event” has the meaning set forth in **Section 17.1**.

“Harmful Code” means any software or means, the purpose or effect of which is to: (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner, any (i) computer, software, firmware, hardware, system or network, or (ii) any application or function of any of the foregoing or the integrity, use or operation of any data Processed thereby; or (b) prevent the State or any Authorized User from accessing or using the Service Software as intended by this Agreement, and includes any virus, trojan horse, worm, backdoor or other malicious computer code and any time bomb or drop dead device.

“Hosted Services” has the meaning set forth in **Section 1.4**.

“Initial Term” has the meaning set forth in **Section 7.1**.

“Key Personnel” means any Contractor Personnel identified as key personnel in this Agreement or any Statement of Work.



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

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

“**Losses**” has a correlative meaning.

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

“**Process**” means to perform any operation or set of operations on any data, information, material, work, expression or other content, including to (a) collect, receive, input, upload, download, record, reproduce, store, organize, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other improvements or derivative works, (b) process, retrieve, output, consult, use, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or (c) block, erase or destroy. “**Processing**” and “**Processed**” have correlative meanings.

“**Reject**” has the meaning set forth in **Section 4.2(b)**.

“**Rejection**” has the meaning set forth in **Section 4.2(b)**.

“**Renewal Term**” has the meaning set forth in **Section 7.2**.

“**Representatives**” means a party’s employees, officers, directors, consultants, and legal advisors.

“**Scheduled Downtime**” has the meaning set forth in **Section 5.1**.

“**Service Availability Credits**” has the meaning set forth in **Section 5.2(a)**.

“**Service Error**” means any failure of the Service Software to be Available not including Scheduled Downtime or otherwise perform in accordance with this Agreement.

“**Service Level Failure**” means a failure to perform the Support Services fully in compliance with **Section 6**.

“**Statement of Work**” has the meaning set forth in **Section 2.1(a)**.

“**Service Period**” is defined as a calendar month.

“**Service Software**” means Contractor’s proprietary web-based Re-TRAC Connect™ software application or applications and any third-party or other software, including the EcoPoint Directory, all Source Code, underlying organization, components, object code, executable code, directories, databases, and configurations, including all existing and new Enhancements, new versions, updates, revisions, improvements and modifications of the foregoing, and any related Documentation thereto.

“**Services**” has the meaning set forth in **Section 2.1**.



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

“**State**” has the meaning set forth in the preamble.

“**State Data**” has the meaning set forth in **Section 9.1**.

“**State Modification**” has the meaning set forth in **Section 13.2(a)**.

“**State Service Manager**” has the meaning set forth in **Section 2.8**.

“**State Systems**” means the information technology infrastructure, including the computers, software, databases, electronic systems (including database management systems) and networks, of the State or any of its designees (for greater certainty, the State Systems does not include the Service Software).

“**Support Services**” has the meaning set forth in **Section 6**.

“**Term**” has the meaning set forth in **Section 7.2**.

“**Transition Period**” has the meaning set forth in **Section 7.5**.

“**Transition Responsibilities**” has the meaning set forth in **Section 7.5**.

1. Grant of Software License and Acceptance of Grant

1.1 Grant of Software License. The Contractor hereby grants to the State a non-exclusive and non-transferable license, exercisable by and through its Authorized Users, to access and use the Service Software through the internet during the Initial Term and such Renewal Terms, if any, subject to and in accordance with the terms and conditions set forth in this Agreement (the “**Software License**”).

1.2 Acceptance of Grant. The State hereby accepts the Software License granted to it, and undertakes to use the Service Software strictly in accordance with the terms and conditions set forth in this Agreement.

1.3 Uses of the Software License:

Authorized Uses: The State hereby undertakes that the Software License shall be used:

- (a) only as expressly authorized by this Agreement;
- (b) solely for the State’s own business purposes.

Prohibited Uses: The State hereby undertakes that it shall not:

(a) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make the Service Software available to any third party, except as expressly permitted by this Agreement or in any Statement of Work; or



(b) use or authorize the use of the Service Software in any manner or for any purpose that is unlawful under applicable Law.

1.4 Hosted Services. The Grant of Software License includes the hosting, management and operation of the Service Software for remote electronic access and use by the State and its Authorized Users (“**Hosted Services**”). Contractor will provide the Hosted Services as part of the Base License Fee. For clarity, Hosted Services are distinct from Professional Services and Technical Support Services, which are both defined in **Section 2**.

2. Services.

2.1 Services. Throughout the Term and at all times in connection with its actual or required performance under this Agreement, Contractor will, in accordance with all terms and conditions set forth in this Agreement and each applicable Statement of Work, provide to the State and its Authorized Users the following services (“**Services**”):

(a) Professional Services as described in one or more written, sequentially numbered, Statements of Work referencing this Agreement, including all requirements set forth in such Statements of Work which are incorporated in and made a part of this Agreement (each, a “**Statement of Work**”); and

(b) Technical Support Services as set forth in **Section 6** and in the Statement of Work.

2.2 Statements of Work. Statements of Work will be effective only when signed by the State and Contractor. Any modifications or changes to the Services under any executed Statement of Work will be effective only if and when memorialized in a mutually agreed written change notice (“**Change Notice**”) signed by both Parties, provided, however, that for any Services provided on a limited basis (for example, on a per user, server, CPU or named-user basis), the State may, at any time, increase or decrease the number of its licenses hereunder subject to a corresponding forward-going adjustment of the Fees to reflect these changes in accordance with the pricing set forth in the applicable Statement of Work.

2.3 Compliance With Laws. Contractor must comply with all applicable Laws as they concern this Agreement, including by securing and maintaining all required and appropriate visas, work permits, business licenses and other documentation and clearances necessary for performance of the Services.

2.4 Subcontracting. Contractor will not subcontract any Professional Services or Technical Support Services. This paragraph will not be construed as limiting Contractor’s ability to select office locations, data storage facilities, internet service providers or other similar inputs to Contractor’s business processes.

2.5 Contractor Personnel. Contractor will:

(a) subject to the prior written approval of the State, appoint: (i) a Contractor employee to serve as a primary contact with respect to the Services who will have the authority to act on behalf of Contractor in matters pertaining to the receipt and processing of client services requests (the “**Contractor Solutions Manager**”); and (ii) a Contractor employee to respond to the State’s inquiries regarding the security of the Contractor Systems who has sufficient knowledge of the security of the Contractor Systems and the authority



to act on behalf of Contractor in matters pertaining thereto (“**Contractor Security Officer**”); and (iii) other Key Personnel, who will be suitably skilled, experienced and qualified to perform the Services;

(b) provide names and contact information for Contractor’s Key Personnel on **Schedule A** to this Agreement;

(c) to the extent practicable, maintain the same Contractor Solutions Manager, Contractor Security Officer and other Key Personnel throughout the Term and such additional period, if any, as Contractor is required to perform the Services, except for changes in such personnel due to: (i) the State’s request pursuant to **Section 2.5(d)**; or (ii) the death, disability, resignation or termination of such personnel or other circumstances outside Contractor’s reasonable control; or (iii) the reasonable discretion of the Contractor.

(d) upon the reasonable written request of the State, promptly replace any Key Personnel of Contractor.

2.6 Management and Payment of Contractor Personnel. Contractor is solely responsible for the payment of Contractor Personnel, including all fees, expenses and compensation to, by or on behalf of any Contractor Personnel and, if applicable, the withholding of income taxes and payment and withholding of social security and other payroll taxes, unemployment insurance, workers’ compensation insurance payments and disability benefits. Contractor will ensure that no Person who has been convicted of a felony or any misdemeanor involving, in any way, theft, fraud, or bribery provides any Services or has access to any State Data or other Confidential Information of the State. If requested by the State, and at Contractor’s sole cost and expense, Contractor will conduct background checks on such Contractor Key Personnel, which background checks must comprise, at a minimum, a review of credit history, references and criminal record, in accordance with applicable Law.

2.7 Time of the Essence. Contractor acknowledges and agrees that time is of the essence with respect to its obligations under this Agreement and that prompt and timely performance of all such obligations, including all requirements of this Agreement and each Statement of Work, is strictly required.

2.8 State Service Manager. The State will appoint and, in its reasonable discretion, replace, a State employee to serve as the primary contact with respect to the Services who will have the authority to act on behalf of the State (the “**State Service Manager**”). The State initially appoints Steven Noble as the State Service Manager. In the event the State places the State Service Manager, the State will provide written notification to Contractor.

3. Intellectual Property Rights

3.1 Contractor acknowledges that as between the parties, the State has the exclusive right, title and interest in (i) all trade-marks, copyrights and other intellectual property rights owned by or licensed to the State (for greater certainty, this excludes the Service Software); and (ii) all State Data provided or made available to Emerge Knowledge or its Representatives by the State, including all trade-marks, copyrights and other intellectual property rights therein or associated therewith (collectively, the “State Intellectual Property”). Contractor shall not in any manner represent that it has any ownership in the State Intellectual Property. For greater certainty, the State Intellectual Property specifically excludes the Service Software and the State’s ownership shall be restricted to its rights in the State Data. The State hereby



acknowledges and agrees that the Service Software, including all modifications, Enhancements and improvements thereto, is not the State Intellectual Property.

3.2 Notwithstanding anything contained herein, the State expressly acknowledges and agrees that for all purposes title to and ownership of the Service Software, including any report templates generated by the Service Software and the methodology that produces such reports, and the data fields in such reports, together with all modifications, Enhancements and improvements to the Service Software and any copyrights, patent rights, trade-marks, trade secrets or other intellectual property rights of any nature whatsoever therein (collectively, the “Contractor Intellectual Property”) are and shall remain the confidential and proprietary property of Emerge Knowledge Design Inc. (also referred to as the Contractor in this Agreement) and the State forever disclaims any rights thereto. The State shall not cause or permit the reverse engineering, disassembly, decompilation of all or any portion of the Contractor Intellectual Property, and shall not create derivative works based on the Contractor Intellectual Property. The State shall not remove any title, trade-mark, copyright or restricted rights notice which Emerge Knowledge Design Inc. may have attached to the Service Software. Contractor owns and shall own all modifications, Enhancements and improvements to the Contractor Intellectual Property regardless of whether such modifications, Enhancements or improvements are made by the Contractor, the State, or a third party. All rights to the Emerge Knowledge Design Inc. Intellectual Property not expressly granted are hereby reserved by Emerge Knowledge Design Inc.

3.3 The provisions of this **Section 3** shall survive and remain in full force and effect following the expiry or termination of this Agreement.

4. Service Preparation, Testing and Acceptance.

4.1 Service Preparation. Promptly upon the parties’ execution of a Statement of Work, Contractor will take all steps necessary to make the Services procured thereunder ready and available for the State’s use in accordance with the Statement of Work and this Agreement, including any applicable milestone date or dates set forth in such Statement of Work.

4.2 Testing and Acceptance.

(a) When Contractor notifies the State in writing that the relevant Statement of Work’s implemented requirements are ready for use in a test environment, the State will have thirty (30) days (or such other period as may be agreed upon by the Parties in writing) from receipt of the notice to test the implemented requirements to determine whether they comply in all material respects with this Agreement.

(b) Upon completion of the State’s testing, the State will notify Contractor of its acceptance (“**Accept**” or “**Acceptance**”) or, if it has identified any noncompliance with the Agreement, rejection (“**Reject**” or “**Rejection**”) of the implemented requirements. If the State Rejects the implemented requirements, the State will provide a written list of items that must be corrected. On receipt of the State’s notice, Contractor will promptly commence, at no additional cost or charge to the State, all reasonable efforts to complete, as quickly as possible and in any event within thirty (30) days (or such other period as may be agreed upon by the Parties in writing) from receipt of the State’s notice, such necessary corrections or repairs to the implemented requirements to bring them into full compliance with the Agreement within the existing functionality of the Service Software.



(c) If any corrective measures are required under **Section 4.2(b)**, upon its completion of all such measures, Contractor will notify the State in writing and the process set forth in **Section 4.2(a)** and **Section 4.2(b)** will be repeated; provided that if the State determines that the implemented requirements, as revised, still do not comply in all material respects with the Agreement, the State may, in its sole discretion:

- (i) require the Contractor to repeat the correction, repair and modification process set forth in **Section 4.2(b)** at no additional cost or charge to the State; or
- (ii) terminate any and all of the relevant Statement of Work, this Agreement and any other Statements of Work hereunder.

(d) The parties will repeat the foregoing procedure until the State Accepts the implemented requirements or elects to terminate the relevant Statement of Work as provided in **Section 4.2(c)(ii)** above. Once the State accepts the requirements, the Contractor will launch the accepted implemented requirements in the Service Software into the production mode.

5. Service Availability and Service Availability Credits.

5.1 Service Availability and Scheduled Downtime.

(a) Availability Requirement. “Availability” or “Available” means State’s Authorized Users are able to access the Service Software in production mode and use all material features and functions of the Service Software effectively and efficiently.

(b) “Unavailable” or “Unavailability” means State’s Authorized Users are unable to access the Service Software in production mode or use all the Service Software’s features and functions effectively and efficiently, or the Software does not otherwise meet the service levels in this Agreement, subject to the following:

Contractor shall use reasonable efforts to ensure that the Service Software licensed hereunder, and hosted by Contractor, is operational twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year other than for maintenance periods for which Contractor will provide reasonable advance notice, provided that no such scheduled maintenance will occur during Contractor Business Hours. Software patches and/or updates are generally scheduled and launched on one of the last three Contractor Business Days of every month (“**Scheduled Downtime**”). Contractor will provide a two-hour notice to State Authorized Users via an on-screen timer in the Service Software. The Service Software may be inaccessible to a State Authorized User during Scheduled Downtime. Scheduled Downtime will occur for thirty minutes or less per session outside of Contractor Business Hours, and not more than three times in one month (1.5 hours or less in one month). Scheduled Downtime will not be considered times when the Service Software is Unavailable.

In addition to Scheduled Downtime, the following will not be considered times when the Service Software is Unavailable:

- (i) Outages resulting from the State Systems including its internet service provider;
- (ii) The State’s negligence or breach of its material obligations under this Agreement; and
- (iii) Excusable delays, including a Force Majeure Event (see **Section 17.1**), as provided for and handled in accordance with the Agreement.



(c) Specific Target Availability. The Target Availability Level is 99.9% in any calendar month not including scheduled maintenance downtime, whereas the Target Availability Level of the Software is 99.79% in any calendar month including Scheduled Downtime.

5.2 Remedies for Service Availability Failures.

(a) If the actual Availability of the Service Software is less than the Target Availability Level including Scheduled Downtime for any Service Period, such failure will constitute a Service Error for which Contractor will issue to the State the following credits on the Service Software Base License Fee payable during the Service Period (“**Service Availability Credits**”):

Actual Availability	Credit of Fees
≥99.79%	None
<99.79% but ≥99.0%	15%
<99.0% but ≥95.0%	35%
<95.0%	100%

(b) Any Service Availability Credits due under this **Section 5.2** will be applied in accordance with **Section 8.10**.

(c) If the actual Availability of the Service Software is less than the Target Availability Level (including Scheduled Downtime) requirement in any two (2) of four (4) consecutive Service Periods, then, in addition to all other remedies available to the State, the State may terminate this Agreement and/or the applicable Statement of Work on written notice to Contractor with no liability, obligation or penalty to the State by reason of such termination.

6. Support and Maintenance Services. Contractor will provide Service Software maintenance and Technical Support Services (collectively, “**Support Services**”) in accordance with the provisions of this **Section 6**. The Support Services are included in the Services, and Contractor may not assess any Fees, costs or charges for such Support Services that are in addition to the Technical Support Fees set out **Schedule D Statement of Work in Section 1.601 COMPENSATION AND PAYMENT**.

6.1 Support Service Responsibilities. Contractor will:

(a) correct all Service Errors in accordance with **Section 6.4**, including by providing defect repair, programming corrections and remedial programming;

(b) make available to State Authorized Users a toll-free telephone number for State Authorized Users of the State Agency (not including the State’s reporting entities) to call for the purpose of receiving technical support for user self-diagnostics to use the Service Software. The Hotline operates during Contractor Business Hours on each Contractor Business Day. Provide online access to technical support for assistance to use the Service Software via an online form in the Service Software and other user support information and forums, to the full extent Contractor makes such resources available to its other customers. Contractor will respond to State Authorized Users’ support requests submitted with the Service Software within two (2) Contractor Business Days.



6.2 Service Monitoring and Management. Contractor will continuously monitor and manage the Service Software to optimize Availability that meets or exceeds the Target Availability Level including Scheduled Downtime Requirement. Such monitoring and management includes:

- (a) proactively monitoring on a twenty-four (24) hour by seven (7) day basis the Service Software;
- (b) if such monitoring identifies, or Contractor otherwise becomes aware of, any circumstance that is reasonably likely to threaten the Availability of the Service Software, taking all necessary and reasonable remedial measures to promptly eliminate such threat and ensure full Availability; and
- (c) if Contractor receives knowledge that the Service Software or any function or component is not Available (including by written notice from the State pursuant to the procedures set forth herein or in the applicable Statement of Work):
 - (i) confirming (or disconfirming) the outage by a direct check;
 - (ii) if Contractor's check in accordance with clause (i) above confirms a Service Software outage in whole or in part: (A) notifying the State in writing pursuant to the procedures set forth herein or in the applicable Statement of Work that an outage has occurred, providing such details as may be available, including a Contractor trouble ticket number, if appropriate, and time of outage; and (B) working all problems causing and caused by the outage until they are resolved as Critical Service Errors in accordance with the Classification set forth in **Section 6.4**, or, if determined to be an internet provider problem, open a trouble ticket with the internet provider; and
 - (iii) notifying the State that Contractor has fully corrected the outage and any related problems, along with any pertinent findings or action taken to close the trouble ticket.

6.3 Service Maintenance. Contractor will continuously maintain the Service Software to optimize Availability that meets or exceeds the Target Availability Level including Scheduled Downtime Requirement. Such maintenance services include providing to the State and its Authorized Users:

- (a) all updates, bug fixes, enhancements, new releases, new versions and other improvements to the Hosted Services, including the Service Software, that Contractor provides at no additional charge to its other similarly situated customers.
- (b) all such services and repairs as are required to maintain the Hosted Services to ensure the Hosted Services operate properly in accordance with this Agreement.

6.4 Service Error Classification and Response. Contractor will correct all Service Errors in accordance with this Agreement and the applicable Statement of Work.

(a) Contractor shall classify and respond to incidents by the underlying problem's effect on the State. Contractor may classify an underlying problem as critical, urgent, or routine. The guidelines for determining the severity of a problem and the appropriate classification of and response to it are described below. The State Service Manager will notify Contractor of incidents, or Service Errors, by e-mail, telephone or such other means as the parties may hereafter agree to in writing.



- i. Contractor will designate a problem as “**critical**” if the Service Software is functionally inoperable (“**Critical Service Error**”). This classification assumes there is no existing patch for the problem. Contractor will respond to critical problems by ensuring that appropriate managerial personnel are made aware of the problem and that they actively track and expedite a resolution. Contractor will assign support or development personnel at the appropriate level to the problem, and those personnel will prepare a work plan for the problem’s expeditious resolution. The work plan will assume that Contractor’s appropriate staff will work until the problem is resolved properly. At the request of the State, Contractor’s personnel will maintain daily contact with the State Service Manager to keep the State aware of efforts being made to solve the problem. If appropriate, Contractor will also provide the State’s technical staff with direct access to Contractor’s support personnel and product development personnel.
- ii. Contractor will classify a problem as “**urgent**” if the underlying problem significantly degrades the performance of the Service Software or a major function or component of it or materially restricts the State’s use of the Service Software in a production mode. A problem also will be considered urgent if a commonly used feature generates application errors, causes the Service Software to freeze, or otherwise routinely does not work as intended. Classification of a problem as urgent rather than critical assumes that the State can still conduct business with the Service Software. As with the critical classification, the urgent classification assumes there is no existing patch or acceptable workaround procedure for the problem. Contractor will respond to urgent problems by having its product development and support personnel work collaboratively to develop a fix or a workaround. If requested, Contractor’s support personnel will maintain regular contact with the State Service Manager to keep the State’s technical staff aware of progress toward a resolution of the problem. Contractor’s support staff will include the problem in regular status reports to the Contractor management team. Contractor’s personnel must provide the fix or workaround procedure as soon as it is available.
- iii. Contractor will classify an incident as “**routine**” if the underlying problem is a question of configuration of the Service Software. It also may be classified as routine when the problem does not materially restrict the State’s use of the Service Software in its production environment, such as when a feature or combination of features generates minor or rare errors. Also, if any problem that otherwise should be classified as critical or urgent can be solved either by a known workaround or an existing patch that does not materially interfere with the State’s use of the Service Software, the problem may be treated as routine. Contractor will respond to routine problems by providing the State with a fix or workaround on a priority basis if the problem is one for which an existing patch or workaround already exists. For newly identified problems falling into this classification, Contractor’s support personnel must generate a problem report, and the appropriate development or support personnel then must prioritize the problem in relation to other outstanding product issues. The assigned priority then will govern the problem solving or developmental work needed to address the problem and the schedule for delivering a solution. For routine support requests that involve end usage issues rather than bugs or other technical problems, Contractor’s support personnel will provide the State’s Authorized Users with telephone assistance. (Requests for configuration for new functionality outside the scope of Agreement will be escalated to the Contractor Solutions Manager and will be managed through Change Notice process.)



iv. Contractor will apply the above classifications in good faith to each support request, and Contractor will give due consideration to any request by the State Service Manager to reclassify a problem.

7. Term and Termination.

7.1 Initial Term. The initial term of this Agreement commences as of the Effective Date and will continue in effect for one (1) year from such date unless and until terminated as provided under this Agreement (the “**Initial Term**”).

7.2 Renewal. Unless this Agreement is terminated earlier pursuant to its provisions, the State may renew this Agreement for additional successive one (1) year terms (each a “**Renewal Term**”), up to a maximum of three (3) additional successive one (1) year terms, by providing written notice to Contractor of its intent to renew at least sixty (60) days prior to the expiration of the then pending term (the Initial Term together with any Renewal Terms, collectively, the “**Term**”).

7.3 Termination for Cause by State. In addition to any right of termination set forth elsewhere in this Agreement:

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

(b) If the State terminates this Agreement under this **Section 7.3**, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of this Agreement, 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 7.4**.

(c) The State will only pay for amounts due to Contractor for Software Licenses and Services accepted by the State on or before the date of termination.

7.4 Termination for Convenience by State. The State may immediately terminate this Agreement in whole or in part, without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance immediately, or (b) continue to perform in accordance with **Section 7.5**. If the State terminates this Agreement for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities to the extent the funds are available.

7.5 Transition Responsibilities. Upon termination or expiration of this Agreement for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days; the “**Transition Period**”), provide all reasonable transition assistance requested by the State, to allow for the



expired or terminated portion of the Agreement to continue without interruption or adverse effect, and to facilitate the orderly transfer of State Data 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 Statement of Work rates (for greater certainty, the Contractor will perform professional services as requested however the State's Re-TRAC Connect™ Software License terminates upon termination of this Agreement and the State would not have access to the Service Software during the Transition Period); (b) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all State Data subject to the terms of this Agreement; and (c) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, the "**Transition Responsibilities**"). The Term of this Agreement is automatically extended through the end of the Transition Period.

7.6 Effect of Termination. Upon and after the termination or expiration of this Agreement or one or more Statements of Work for any or no reason:

(a) Contractor will be obligated to perform all Transition Responsibilities specified in **Section 7.5**.

(b) All licenses granted to Contractor in State Data will immediately and automatically also terminate. The State may export all State Data not required by Contractor for its Transition Responsibilities, if any, using the standard mechanism available to all customers to export customer data.

(c) Contractor will (i) return to the State all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the State's Confidential Information (for greater certainty, this does not include the Service Software or historical data backups of the Service Software); (ii) permanently erase the State's Confidential Information from the Service Software (not including historical data backups) and (iii) certify in writing to the State that it has complied with the requirements of this **Section**, in each case to the extent such materials are not required by Contractor for Transition Responsibilities, if any.

(d) Without limiting any other rights or remedies available to Contractor under this Agreement at law or in equity, Contractor may terminate this Agreement upon notice to the State if Contractor has not received any payment when due under this Agreement and the State has not made such payment within ninety (90) business days after receiving such notice from Contractor.

(e) In the event of notice of termination of this Agreement by Contractor due to the State's breach of this Agreement, and without limiting any other rights or remedies available to Contractor under this Agreement, at law or in equity, Contractor shall be entitled to receive from the State all undisputed amounts due or payable under this Agreement through the date of termination and Transition Period (if any).

(f) Upon termination of this Agreement, the State's the Service Software License will terminate immediately.

7.7 Survival. The rights, obligations and conditions set forth in this **Section 7.7** and the **Definitions** list above, **Section 3** (Intellectual Property Rights), **Section 7.5** (Transition Responsibilities), **Section 7.6** (Effect of Termination), **Section 9** (State Data), **Section 10** (Confidentiality), **Section 11** (Security), **Section 13.1** (Indemnification), **Section 14** (Limitations of Liability), **Section 15** (Representations and Warranties), **Section 16** (Insurance), **Section 18** (General Provisions), and any right, obligation or



condition that, by its express terms or nature and context is intended to survive the termination or expiration of this Agreement, survives any such termination or expiration hereof.

8. Fees and Expenses.

8.1 Fees. Subject to the terms and conditions of this Agreement and applicable Statements of Work, including the provisions of this **Section 8**, the State shall pay the fees set forth in the applicable Statements of Work, subject to such increases and adjustments as may be permitted pursuant to **Section 8.2** (“Fees”).

8.2 Fees During Renewal Terms. Contractor’s Fees are fixed during the Initial Term and the first two Renewal Terms. Contractor may increase Fees for the third Renewal Term, if any, to a level equal to Contractor’s standard commercial fees then in effect by providing written notice to the State at least sixty (60) calendar days prior to the commencement of such Renewal Term. No increase in Fees is effective unless made in compliance with the provisions of this **Section 8.2**.

8.3 Responsibility for Costs. Contractor is responsible for all costs and expenses incurred in or incidental to the performance of Services, including all costs of any materials supplied by Contractor, all fees, fines, licenses, bonds, or taxes required of or imposed against Contractor, and all other of Contractor’s costs of doing business.

8.4 Taxes. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement 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 Agreement.

8.5 Invoices. Contractor will invoice the State for all Fees in electronic format, via such delivery means and to such address as are specified by the State in writing from time to time. If more than one Statement of Work is in effect, Contractor shall provide separate invoices for each Statement of Work. Each separate invoice must: (a) clearly identify the Statement of Work to which it relates, in such manner as is required by the State; (b) list each Fee item and Service Credit separately; (c) include sufficient detail for each line item to enable the State to verify the calculation thereof; (d) for Fees determined on a time and materials basis, report details of time taken to perform Services; and (e) include such other information as may be required by the State as set forth in the applicable Statement of Work.

8.6 Payment Terms.

(a) The State will pay all properly invoiced amounts payable and due hereunder within forty-five (45) days after the State’s receipt of Contractor’s proper invoice therefor, except that the State may withhold from any payment any charge or amount disputed in good faith by the State pending resolution of such dispute.

(b) All payments hereunder must be in US dollars and made by check. Payments shall be made to the address or account specified in the Statement of Work or such other address or account as is specified by Contractor in writing from time to time, provided that Contractor gives the State at least thirty (30) days’ prior



notice of any account, address or other change in payment instructions. The State will not be liable for any late or misdirected payment caused by Contractor's failure to provide timely notice of any such change.

8.7 State Audits of Contractor. During the Term and for three (3) years after, Contractor must maintain complete and accurate books and records regarding its business operations relevant to the calculation of Fees and any other information relevant to Contractor's compliance with this **Section 8**. During the Term and for three (3) years after, upon the State's request, Contractor must make such books and records and appropriate personnel, including all financial information, available during normal Contractor business hours for inspection on Contractor premises and audit by the State or its authorized representative, provided that the State: (a) provides Contractor with at least fifteen (15) days prior notice of any audit, and (b) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Contractor's normal business operations.

The State may take copies and abstracts of materials audited. The State will pay the cost of such audits unless an audit reveals an overbilling or over-reporting of five percent (5%) or more, in which case Contractor shall reimburse the State for the reasonable cost of the audit. Contractor must immediately upon written notice from the State pay the State the amount of any overpayment revealed by the audit, together with any reimbursement payable pursuant to the preceding sentence.

8.8 Payment Does Not Imply Acceptance. The making of any payment or payments by the State, or the receipt thereof by Contractor, will in no way affect the responsibility of Contractor to perform the Services in accordance with this Agreement, and will not imply the State's Acceptance of any Services or the waiver of any warranties or requirements of this Agreement, including any right to Service Credits.

8.9 Withhold Remedy. In addition and cumulative to all other remedies in law, at equity and under this Agreement, if Contractor is in material default of its performance or other obligations under this Agreement or any Statement of Work and fails to cure the default within fifteen (15) days after receipt of the State's written notice of default, the State may, without waiving any other rights under this Agreement, elect to withhold from the payments due to Contractor under this Agreement during the period beginning with the sixteenth (16th) day after Contractor's receipt of such notice of default, and ending on the date that the default has been cured to the reasonable satisfaction of the State, an amount that, in the State's reasonable judgment, is in proportion to the magnitude of the default or the Service that Contractor is not providing. Upon Contractor's cure of the default, the State will cause the withheld payments to be paid to Contractor, without interest. Upon a final and binding legal determination that the State has withheld any payment in bad faith, such payment shall promptly be paid to Contractor, plus interest at the maximum legal rate.

8.10 Application of Service Availability Credits. Contractor acknowledges and agrees that each of the Service Availability Credits assessed pursuant to **Section 5**: (a) is a reasonable estimate of and compensation for the anticipated or actual harm to the State that may arise from the corresponding Service Level Failure, which would be impossible or very difficult to accurately estimate; and (b) may, at the State's option, be credited or set off against any Fees or other charges payable to Contractor under this Agreement or be payable to the State upon demand. No Service Availability Credits for any Service Period may exceed the total amount of Fees that would be payable for that Service Period if the Services were fully provided in accordance with this Agreement.



8.11 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 then due and owing to it by Contractor against any amount payable by the State to Contractor under this Agreement.

8.12 Support Not to be Withheld or Delayed. Contractor may not withhold, delay or fail to perform any Services or obligations hereunder by reason of: (a) the State's good faith withholding of any payment or amount in accordance with this **Section 8**; or (b) any dispute whatsoever between the parties, including any payment or other dispute arising under or concerning this Agreement or any other agreement between the parties.

9. State Data.

9.1 All data and information that the State enters into the Service Software, all data that End Users agree to share with the State in the Service Software, and all data and other information provided to Contractor by the State is the exclusive property of the State ("State Data"). This definition is to be construed as broadly as possible; however, for clarity, State Data does not include the Service Software. The Contractor may not use any State Data for any marketing purposes without the written approval of the State Service Manager for each instance that is materially different from a previously approved use.

10. Confidentiality.

10.1 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).

10.2 Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. The parties agree to advise and require their respective employees and agents of their obligations to keep all Confidential Information confidential.

10.3 Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party



immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement. Each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

10.4 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 Agreement or any Statement of Work corresponding to the breach or threatened breach.

10.5 Surrender of Confidential Information upon Termination. Upon termination or expiration of this Agreement 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 (excepting, for greater clarity, that the Contractor will not return or provide State Confidential Information saved on daily backups of the Service Software to the State); provided, however, that the State may export State Data following the timeframe and procedure described further in this Agreement.

11. Security.

11.1 Protection of the State's Confidential Information. Throughout the Term and at all times in connection with its actual or required performance of the Services hereunder, Contractor will:

(a) maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State's Confidential Information that comply with the requirements of the State's data security policies as set forth in **Schedule B** (Data Security Requirements) and, to the extent such practices and standards are consistent with and not less protective than the foregoing requirements, are at least equal to applicable best industry practices and standards;

(b) provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, transfer or Processing of such information that ensure a level of security appropriate to the risks presented by the Processing of the State's Confidential Information and the nature of such Confidential Information, consistent with the standards described herein including:

(c) take all reasonable measures to:

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



- (ii) prevent (A) the State and its Authorized Users from having access to the data of other customers' Confidential Information; (B) the State's Confidential Information from being contaminated by the data of or disclosed to other customers or their users of the Service Software; and (C) unauthorized access to any the State's Confidential Information

(d) continuously monitor its systems for potential areas where security could be breached.

11.2 Unauthorized Access. Contractor may not access, and shall not permit any access to, State Systems, in whole or in part, whether through Contractor's Systems or otherwise, without the State's express prior written authorization. Such authorization may be revoked by the State in writing at any time in its sole discretion. Any access to State Systems must be solely in accordance with this Agreement, and in no case exceed the scope of the State's authorization pursuant to this **Section 11.2**. All State-authorized connectivity or attempted connectivity to State Systems shall be only through the State's security gateways and firewalls and in compliance with the State's security policies set forth in **Schedule B** as the same may be supplemented or amended by the State and provided to Contractor from time to time.

11.3 Contractor Systems. Contractor will be solely responsible for the information technology infrastructure, including all computers, software, databases, electronic systems (including database management systems) and networks used by Contractor ("**Contractor Systems**").

11.4 Security Audits. During the Term, Contractor will:

(a) maintain accurate records relating to its data protection practices and the security of any of the State's Confidential Information, including any backup, disaster recovery or other policies, practices or procedures relating to the State's Confidential Information and any other information relevant to its compliance with this **Section 11**;

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

(c) if Contractor engages a third party auditor to perform a Statement on Standards for Attestation Engagements No. 16 (SSAE 16) audit of Contractor's operations, information security program or disaster recovery/business continuity plan, Contractor will provide a copy of the audit report to the State within thirty (30) days after Contractor's receipt of such report. Any such audit reports will be recognized as Contractor's Confidential Information.



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

12. Redundancy, Data Backup and Disaster Recovery. Contractor must, in accordance with the provisions of this **Section 12**, maintain or cause to be maintained disaster avoidance procedures designed to safeguard the State Data and State Confidential Information, Contractor's Processing capability and the availability of the Service Software, in each case throughout the Term and at all times in connection with its actual or required performance of the Services hereunder. The force majeure provisions of **Section 17.1** do not limit Contractor's obligations under this **Section 12**.

12.1 Redundant Hosting and Connectivity. Contractor will simultaneously operate a mirror system at a location that is geographically remote from the primary system on which the Service Software is hosted. Except for its location, the mirror system must: (a) have hardware and software, network connectivity, power supplies, backup generators and other similar equipment and services that operate independently of the primary system; (b) have fully current backups of all the State Data stored on the primary system as described in Schedule C: Data Backup Requirements; and (c) have the ability to provide the Service Software in accordance with this Agreement during the performance of routine and remedial maintenance, not including Scheduled Downtime, or any outage or failure of the primary system fails. Contractor will operate, monitor and maintain such mirror system so that it may be activated within seventy-two (72) hours of being alerted to any failure of the Service Software to be Available.

12.2 Data Backup. Contractor will conduct daily back-ups of State Data and store such back-ups as specified in **Schedule B** and **Schedule C**.

13. Indemnification.

13.1 General Indemnification. Contractor must defend, indemnify and hold harmless the State, and the State's agencies, departments, officers, directors, employees, agents, and contractors from and against all Losses arising out of or resulting from any third party claim, suit, action or proceeding (each, an "**Action**") that does or is alleged to arise out of or result from:

(a) the Contractor's breach of any representation, warranty, covenant or obligation of Contractor under this Agreement (including, in the case of Contractor, any action or failure to act by any Contractor Personnel that, if taken or not taken by Contractor, would constitute such a breach by Contractor); or

(b) any negligence or more culpable act or omission (including recklessness or willful misconduct) in connection with the performance or nonperformance of any Services or other activity actually or required to be performed by or on behalf of, Contractor (including, in the case of Contractor, any Contractor Personnel) under this Agreement, provided that, to the extent that any Action or Losses described in this **Section 13.1** arises out of, results from, or alleges a claim that any of the Services does or threatens to infringe, misappropriate or otherwise violate any Intellectual Property Rights or other rights of any third party, Contractor's obligations with



respect to such Action and Losses, if any, shall be subject to the terms and conditions of **Section 13.2(a)** through **Section 13.2(b)** and **Section 13.3**.

13.2 Infringement Indemnification By Contractor. Contractor must indemnify, defend and hold the State, and the State's agencies, departments, officers, directors, employees, agents, and contractors harmless from and against all Losses arising out of or resulting from any Action that does or is alleged to arise out of or result from a claim that any of the Services, or the State's or any Authorized User's use thereof, actually does or threatens to infringe, misappropriate or otherwise violate any Intellectual Property Right or other right of a third party, provided however, that Contractor shall have no liability or obligation for any Action or Loss to the extent that such Action or Loss arises out of or results from any:

(a) alteration or modification of the Hosted Services or Service Software by or on behalf of the State or any Authorized User without Contractor's authorization (each, a "**State Modification**"), provided that no infringement, misappropriation or other violation of third party rights would have occurred without such State Modification and provided further that any alteration or modification made by or for Contractor at the State's request shall not be excluded from Contractor's indemnification obligations hereunder unless (i) such alteration or modification has been made pursuant to the State's written requirements and (ii) the Service Software, as altered or modified in accordance with the State's requirements, would not have violated such third party rights but for the manner in which the alteration or modification was implemented by or for Contractor; and

(b) use of the Service Software by the State or an Authorized User pursuant to this Agreement in combination with any software or service not provided, authorized or approved by or on behalf of Contractor, if (i) no violation of third party rights would have occurred without such combination and (ii) such software or service is not commercially available and not standard in Contractor's or the State's industry and there are no requirements, Documentation, or other materials indicating Contractor's specification, authorization or approval of the use of the Service Software in combination therewith.

13.3 Mitigation.

(a) If Contractor receives or otherwise learns of any threat, warning or notice alleging that all, or any component or feature, of the Services violates a third party's rights, Contractor must promptly notify the State of such fact in writing, and take all commercially reasonable actions necessary to ensure the State's continued right to access and use such Services and otherwise protect the State from any Losses in connection therewith, including investigating such allegation and obtaining a credible opinion of counsel that it is without merit.

(b) Subject to the exclusions set forth in clauses (a) and (b) of **Section 13.2**, if any of the Services or any component or feature thereof is ruled to infringe or otherwise violate the rights of any third party by any court of competent jurisdiction, or if any use of any Services or any component thereof is threatened to be enjoined, or is likely to be enjoined or otherwise the subject of an infringement or misappropriation claim, Contractor must, at Contractor's sole cost and expense:

- (i) procure for the State the right to continue to access and use the Service Software to the full extent contemplated by this Agreement; or



- (ii) modify or replace all components, features and operations of the Service Software that infringe or are alleged to infringe (“**Allegedly Infringing Features**”) to make the Service Software non-infringing while providing equally or more suitable features and functionality, which modified and replacement services shall constitute Service Software and be subject to the terms and conditions of this Agreement.

(c) If neither of the remedies set forth in **Section 13.3(b)** is reasonably available with respect to the Allegedly Infringing Features 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 any prepaid Fees for Services that have not been provided.

(d) The remedies set forth in this **Section 13.3** are in addition to, and not in lieu of, all other remedies that may be available to the State under this Agreement or otherwise, including the State’s right to be indemnified pursuant to **Section 13.1** and **Section 13.2**.

13.4 Indemnification Procedure. The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations. The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense, at its own expense, if the State deems necessary. Contractor will not, without the State’s prior written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. Any litigation activity on behalf of the State or any of its subdivisions, under this **Section 13**, 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.

14. Limitations of Liability.

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

(b) The State’s Limitation of Liability. IN NO EVENT WILL THE STATE’S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS AGREEMENT, 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 AGREEMENT, EXCEED THE MAXIMUM AMOUNT OF FEES SPECIFIED IN THE STATEMENT OF WORK.

(c) The Contractor’s Limitation of Liability. IN NO EVENT SHALL THE CONTRACTOR’S DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS BE LIABLE FOR ANY CLAIM FOR: (I) PUNITIVE, EXEMPLARY, OR AGGRAVATED DAMAGES; (II) DAMAGES FOR LOSS OF PROFITS OR REVENUE, FAILURE TO REALIZE EXPECTED SAVINGS; OR (III) INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES. IN NO EVENT WILL THE CONTRACTOR’S MAXIMUM TOTAL LIABILITY FOR ANY CLAIM



WHATSOEVER INCLUDING, WITHOUT LIMITATION, CLAIMS FOR BREACH OF CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) OR OTHERWISE, BE AN AWARD FOR DIRECT, PROVABLE DAMAGES EXCEEDING THE AMOUNT OF FEES PAID TO THE CONTRACTOR UNDER THIS AGREEMENT IN THE MOST RECENT ANNUAL TERM. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT MORE THAN TWELVE (12) MONTHS AFTER THE FACTS GIVING RISE TO THE CAUSE OF ACTION HAVE OCCURRED, REGARDLESS OF WHETHER THOSE FACTS BY THAT TIME WERE UNKNOWN BY THE STATE.

15. Contractor Representations and Warranties.

15.1 Authority and Bid Response. 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 Agreement 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 Agreement, to grant the rights and licenses granted under this Agreement, and to perform its contractual obligations;
- (c) the execution of this Agreement by its Representative has been duly authorized by all necessary organizational action;
- (d) when executed and delivered by Contractor, this Agreement will constitute the legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with its terms;
- (e) all written information furnished to the State by or for Contractor in connection with this Agreement 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
- (f) 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.

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

- (a) Contractor has, and throughout the Initial Term and any additional Renewal Terms periods during which Contractor does or is required to perform the Services will have, the unconditional and irrevocable right, power and authority, including all permits and licenses required, to provide the Services and grant and perform all rights and licenses granted or required to be granted by it under this Agreement;
- (b) neither Contractor's grant of the rights or licenses hereunder nor its performance of any Services or other obligations under this Agreement does or at any time will: (i) conflict with or violate any applicable Law, including any Law relating to data privacy, data security or personal information; (ii) require the consent, approval or authorization of any governmental or regulatory authority or other third party; or (iii) require the provision of any payment or other consideration by the State or any Authorized User to any third party, and



Contractor shall promptly notify the State in writing if it becomes aware of any change in any applicable Law that would preclude Contractor's performance of its material obligations hereunder;

(c) as accessed and used by the State or any Authorized User in accordance with this Agreement, the Service Software, Documentation and all other Services and materials provided by Contractor under this Agreement will not infringe, misappropriate or otherwise violate any Intellectual Property Right or other right of any third party;

(d) there is no settled, pending or, to Contractor's knowledge as of the Effective Date, threatened Action, and it has not received any written, oral or other notice of any Action (including in the form of any offer to obtain a license): (i) alleging that any access to or use of the Services or Service Software does or would infringe, misappropriate or otherwise violate any Intellectual Property Right of any third party; (ii) challenging Contractor's ownership of, or right to use or license, any software or other materials used or required to be used in connection with the performance or receipt of the Services, or alleging any adverse right, title or interest with respect thereto; or (iii) that, if decided unfavorably to Contractor, would reasonably be expected to have an actual or potential adverse effect on its ability to perform the Services or its other obligations under this Agreement, and it has no knowledge after reasonable investigation of any factual, legal or other reasonable basis for any such litigation, claim or proceeding;

(e) the Service Software and Services will in all material respects conform to and perform in accordance with all requirements of this Agreement, including the Availability and Availability Requirement provisions set forth in **Section 5**;

(f) the Contractor Systems and Services are and will remain free of Harmful Code;

(g) Contractor will perform all Services in a timely, professional and workmanlike manner with a level of care, skill, practice and judgment consistent with generally recognized industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications, and will devote adequate resources to meet Contractor's obligations (including the Availability Requirement and Support Service Responsibilities) under this Agreement;

(h) During the term of this Contract, any audit rights contained in any third-party software license agreement or end user license agreement for third-party software incorporated in or otherwise used in conjunction with the Services, will apply solely to Contractor's (or its subcontractors) facilities and systems that host the Services (including any disaster recovery site), and regardless of anything to the contrary contained in any third-party software license agreement or end user license agreement, third-party software providers will have no audit rights whatsoever against State Systems or networks; and,

(i) Contractor acknowledges that the State cannot indemnify any third parties, including but not limited to any third-party software providers that provide software that will be incorporated in or otherwise used in conjunction with the Services, and that notwithstanding anything to the contrary contained in any third-party software license agreement or end user license agreement, the State will not indemnify any third party software provider for any reason whatsoever.

15.3 DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY GIVES ANY REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF ANY KIND,



WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE INCLUDING WITHOUT LIMITATION REPRESENTATIONS, WARRANTIES, CONDITIONS AS TO UNINTERRUPTED OR ERROR FREE SERVICE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF.

16. Insurance.

16.1 Required Coverage. At all times during the Term, Contractor will procure and maintain, at its sole cost and expense, all insurance coverage required by applicable Law, and in any event insurance coverage in the following types and amounts:

(a) Commercial General Liability with limits no less than One Million Canadian Dollars (\$1,000,000 CAD) per occurrence and Two Million Canadian Dollars (\$2,000,000 CAD) in the aggregate, including bodily injury and property damage and products and completed operations and advertising liability, which policy will include contractual liability coverage insuring the activities of Contractor under this Agreement;

(b) Cyber Liability Insurance, including first party and third party coverage, with limits no less than One Million Canadian Dollars (\$1,000,000 CAD) per occurrence and One Million Canadian Dollars (\$1,000,000 CAD) in the aggregate for all claims each policy year, including coverage for information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability;

(c) Worker's Compensation if required by law with limits no less than the amount required by applicable Law and employers liability insurance with limits no less than Five Hundred Thousand Dollars (\$500,000 CAD) for each accident, including occupational disease coverage (for monopolistic jurisdictions, employers liability coverage must be endorsed on the commercial general liability policy or procured through a standalone policy);

(d) Commercial Automobile Liability with limits no less than One Million Canadian Dollars (\$1,000,000 CAD), each occurrence combined single limit of liability for bodily injury, death and property damage, including owned and non-owned and hired automobile coverages, as applicable; and

(e) Errors and Omissions/Professional Liability with limits no less than One Million Canadian Dollars (\$1,000,000 CAD) per occurrence and One Million Canadian Dollars (\$1,000,000 CAD) in the aggregate for all claims each policy year.

16.2 Policy Terms. All insurance policies required pursuant to this **Section 16** must:

(a) be issued by insurance companies with a A.M. Best's Rating of no less than "A" and a financial size of VII or better;

(b) provide that such insurance carriers give the State at least thirty (30) days' prior written notice of any cancellation or non-renewal of, or material change in, the coverage, scope or amount of such policy and, prior to any such cancellation, non-renewal or material change in coverage, Contractor will have new insurance policies in place that meet the requirements of this **Section 16**;

(c) waive any right of subrogation of the insurers against the State specific to employers liability;



(d) provide that such insurance be primary insurance and any similar insurance in the name of and/or for the benefit of the State will be excess and non-contributory; and

(e) name the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate, as pertains to the Commercial General Liability policy.

16.3 Coverage. To the extent any insurance coverage required under this **Section 16** is purchased on a “claims-made” basis, such insurance must cover all prior acts of Contractor during the Term and any additional periods during which Contractor does or is required to perform the Services, and such insurance must be continuously maintained until at least one (1) year beyond the expiration or termination of the Term, or Contractor will purchase “tail” coverage, effective upon termination of any such policy or upon termination or expiration of the Term, to provide coverage for at least one (1) year from the occurrence of either such event.

16.4 Certificates of Insurance. Upon the written request of the State, Contractor will provide the State with copies of the certificates of insurance and policy endorsements for all insurance coverage required by this **Section 16**, and will not do anything to invalidate such insurance. Certificates of Insurance evidencing all coverages described in this **Section 16** must be furnished to the State upon written request. Contractor must give thirty (30) days’ prior written notice to the State of any cancellation, non-renewal or material change in coverage, scope, or amount of any insurance policy required by or affecting the State’s rights or remedies under this Agreement.

16.5 Non-waiver. This **Section 16** is not intended to and is not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Agreement (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

17. Force Majeure.

17.1 Force Majeure Events. Subject to **Section 17.2**, neither party will be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term hereof, when and to the extent such failure or delay is caused by: acts of God, flood, fire or explosion, the unforeseen breakdown of the world wide web or any third-party telecommunications carrier, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, or any passage of law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition (each of the foregoing, a “**Force Majeure Event**”), in each case provided that: (a) such event is outside the reasonable control of the affected party; (b) the affected party gives prompt written notice to the other party, stating the period of time the occurrence is expected to continue; (c) the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event. The party suffering the Force Majeure Event shall forthwith give notice in writing to the other party of such fact. Upon receipt, the party receiving such notice the parties shall communicate to establish plans and procedures to overcome or mitigate the effects of the Force Majeure Event, and the party suffering the Force Majeure Event shall use all reasonable efforts to minimize any adverse effects on the other party.



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

17.3 Exclusions; Non-suspended Obligations. Notwithstanding the foregoing or any other provisions of this Agreement:

(a) in no event will any of the following be considered a Force Majeure Event:

- (i) shutdowns, disruptions or malfunctions of the Contractor Systems or any of Contractor's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to the Contractor Systems; or
- (ii) the delay or failure of any Contractor Personnel to perform any obligation of Contractor hereunder unless such delay or failure to perform is itself by reason of a Force Majeure Event; and

(b) no Force Majeure Event modifies or excuses Contractor's obligations under **Section 5.2(a)** (Service Availability Credits), **Section 9** (State Data), **Section 10** (Confidentiality), **Section 11** (Security), **Section 12** (Data Backup and Disaster Recovery) or **Section 13** (Indemnification).

18. General Provisions.

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

18.2 Relationship of the Parties. The relationship between the parties is that of independent contracting parties. Nothing contained in this Agreement is to be construed as creating any agency, partnership, joint venture or other form of joint enterprise or co-ownership, employment or fiduciary relationship between the parties, or otherwise as participants in a joint or common undertaking, and neither party has authority to contract for or bind the other party in any manner whatsoever.

18.3 Media Releases. News releases (including promotional literature and commercial advertisements) pertaining to this Agreement 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.

18.4 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder, other than routine communications having no legal effect, 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 18.4**):



If to State:

Address: 525 West Allegan Street
Lansing, Michigan 48909
E-mail: barronj1@michigan.gov
Attention: Jarrod Barron
Title: Buyer

If to Contractor:

Address: 401-250 McDermot Ave.
Winnipeg, Manitoba
Canada, R3B 0S5
E-mail: rick@emergeknowledge.com
Attention: Rick Penner
Title: President

Notices sent in accordance with this **Section 18.4** will be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail (with confirmation of transmission), if sent during normal business hours of the recipient, and on the next business day, if sent after normal business hours of the recipient; or (d) on the fifth (5th) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

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

Entire Agreement. This Agreement, including all Statements of Work and other Schedules, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms of this Agreement and those of any Schedule or other document, the following order of precedence governs: (a) first, this Agreement, excluding its Schedules; and (b) second, the Schedules to this Agreement as of the Effective Date. NO BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS REQUIRED BY THE CONTRACTOR, OR DOCUMENTATION HEREUNDER, WILL CONSTITUTE A PART OR AMENDMENT OF THIS AGREEMENT OR IS BINDING ON THE STATE OR ANY AUTHORIZED USER FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE AND THE AUTHORIZED USER, EVEN IF ACCESS TO OR USE OF SUCH SERVICE OR DOCUMENTATION REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS. THE STATE AGREES, HOWEVER, THAT LINKS TO EXTERNAL INTERNET WEB SITES ARE PROVIDED IN THE SERVICE SOFTWARE AND ARE PROVIDED MERELY AS A CONVENIENCE AND DO NOT IMPLY ENDORSEMENT OF THE LINKED OR REFERENCED SITES OR THEIR CONTENT BY CONTRACTOR. THE STATE'S USE, OR USE BY ANY AUTHORIZED USER, OF SUCH EXTERNAL LINKED SITES SHALL BE SUBJECT TO THE TERMS AND CONDITIONS THAT APPLY TO THOSE EXTERNAL SITES, AND CONTRACTOR IS NOT RESPONSIBLE FOR THE ACCURACY, RELIABILITY,



OR CURRENCY OF THE INFORMATION OR SERVICES PROVIDED ON THE LINKED SITES OR BY EXTERNAL SOURCES.

18.6 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 Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the State's prior written consent. The State has the right to terminate this Agreement in its entirety or any Services or Statements of Work hereunder, pursuant to **Section 7.4**, if Contractor delegates or otherwise transfers any of its obligations or performance hereunder, whether voluntarily, involuntarily, by operation of law or otherwise, and no such delegation or other transfer will relieve Contractor of any of such obligations or performance. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Contractor (regardless of whether Contractor is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Agreement for which the State's prior written consent is required. Any purported assignment, delegation, or transfer in violation of this **Section 18.6** is void.

18.7 No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties and nothing herein, express or implied, is intended to or will confer on any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

18.8 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party. No waiver by any party of any of the provisions hereof is effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

18.9 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto will negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

18.10 Governing Law. This Agreement 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 Agreement are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Agreement 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.

18.11 Equitable Relief. Each party to this Agreement acknowledges and agrees that (a) a breach or threatened breach by such party of any of its obligations under this Agreement would give rise to



irreparable harm to the other party for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by such party of any such obligations, the other party hereto is, in addition to any and all other rights and remedies that may be available to such party at law, at equity or otherwise in respect of such breach, entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy. Each party to this Agreement agrees that such party will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this **Section 18.11**.

18.12 Schedules. All Schedules referenced herein and attached hereto are hereby incorporated by reference. The following Schedules are attached hereto and incorporated herein:

- Schedule A** Key Personnel
- Schedule B** Data Security Requirements
- Schedule C** Data Backup Requirements
- Schedule D** Statement of Work

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

Contractor

State

By: _____

By: _____

Name: Rick Penner

Name: Sharon Walenga-Maynard

Title: President

Title: Sourcing Director

Date: _____

Date: _____



SCHEDULE A
KEY PERSONNEL

The following Contractor key personnel may perform professional services and technical support as part of this contract:

Jennifer Peters, Operations Manager (jen@emergeknowledge.com)

Brian Lowe, Contractor Security Officer (brian@emergeknowledge.com)

Dan Butcher, Senior Solutions Manager (dan@emergeknowledge.com)

Jerett Bogue, Solutions Manager (jerett@emergeknowledge.com)

Hudson Gevaert, Senior Systems Analyst (contact only via jen@emergeknowledge.com)

Frankie McGregor, Computer Programmer (contact only via jen@emergeknowledge.com)

Cathie Baranda, Quality Assurance Analyst and Technical Support Representative (support@re-trac.com)



SCHEDULE B

DATA SECURITY REQUIREMENTS

The information security strategy and procedures outlined below shall be followed to protect State information entered in the Service Software.

Technology & Security Overview

Contractor shall maintain security at multiple levels throughout its organization, web infrastructure, and application programs.

- At the organizational level, Contractor shall have an active risk management strategy whereby the IT team actively monitors a wide range of information sources on technology and security vulnerabilities and current mitigation strategies. This information must be used to analyze and update the Contractor's infrastructure.
- Contractor shall assess security risks and relevant mitigation strategies at all stages of its software development and deployment process and at all levels of its information technology and business operations.
- Contractor shall have in place policies, processes, and procedures to ensure the security of its application, data, and technology infrastructure, including:
 - Physical security (of infrastructure)
 - Application security
 - Data security
 - Operational security
 - Network security

Security Roles & Responsibilities

Contractor shall have the responsibility for provisioning access as well as functional responsibilities for the administration of logical access and security, including password policy (relying on user ID's and passwords to authenticate appropriate level of access for the user/employee) and access removal (if an employee is terminated).

Application Security

Access controls shall be implemented in the following manner:

- User ID and password are local to the application. User ID must be encrypted in storage
- Authentication is based on user identification (user supplied email address) and password.
- Passwords have a minimum number of characters while allowing a broad range of characters to let the user to construct a strong password.
- Users can change their email address (and thus the username used to access the application).
- Users can change their password, but must enter their old password in order to make the change.

To ensure the integrity of the information of each user session, the Contractor's web-based applications utilize the following technologies and techniques:

- Secure Sockets Layer (SSL) and Transport Layer Security (TLS) encrypts all communications between the server and the web browser.
- Passwords are stored in the database encrypted using a salted SHA hash; plain text forms of the password are not stored.



The Contractor's development process follows secure software development best practices. Below is a list of technologies and techniques that must be used in the Contractor's software development:

- SQL injection attack auditing and testing
- Cross site scripting auditing and testing
- Data storage in a back-end database with strict access controls

To facilitate the investigation of irregular events within the application, the Contractor must log all HTTP requests and retains these 30 days. In addition, significant events (including but not necessarily limited to the following) are logged in the application:

- User logins, logouts, and authentication failures
- Create, update, and delete actions on transactional data
- Users opting into programs
- Report generation

These logs must be retained and able to be viewed by the Contractor users with administrative level access.

Data Security

Database access and integrity must be maintained in the following manner:

- A username and password is required to connect to the database
- Database access ports are firewalled from the internet at large
- Servers have mirrored discs which allow us to continue operations in the event of a disc failure
- There is a backup system in place that allows for recovery of the application and database

Operations Security

The Contractor must undertake the following practices to maintain operating system (OS) security:

- All root passwords are different
- All user accounts have passwords; many system accounts do not have login privileges
- We have the minimum number of accounts on the system required to run it efficiently
- We configure services such as the web server and database server to meet security standards
- Access to the servers from the internet is prohibited for the primary administrative account
- Servers that do not need to be exposed to the internet are kept behind the firewall
- Contractor servers connected to the internet, including all System servers, are kept up-to-date with the latest operating system and vendor patches

To ensure continued operation of the servers, the Contractor must do the following:

- Have redundant hard drives in a RAID configuration
- Have redundant power supplies
- Have redundant internet connections
- Utilize monitoring software that sends alerts to the I/T team in the event of a hardware problem
- Utilize uptime monitoring software that sends alerts to the I/T team
- Have production servers located at a server center

Network & Server Security

Server security must be maintained using industry standard techniques including software firewalls and event logging. Tools used to detect and eliminate potentially malicious activity include must exist and include:

- A server firewall that blocks all incoming traffic except for the services that need to be exposed in order to meet the contract requirements
- The server center monitors traffic and possible attacks
- Monitoring software to identify, mitigate, and report on well-known attacks



SCHEDULE C DATA BACKUP REQUIREMENTS

Backup and Recovery

Contractor shall, each Contractor Business Day, perform a full data backup of all State Data entered into the Service Software and shall store such backups at a secure facility.

The Contractor shall have a comprehensive approach to backing up data, including:

- Systems are running 'snapshot' software designed to capture critical application information (code base, configuration and log files, and database) in order to recover any system in case of server failure. The snapshot scripts run each Contractor Business Day.
- Snapshots are copied every Contractor Business Day to an encrypted external disc that is stored offsite.
- An archive of snapshots is maintained. Snapshots can be retrieved for use such as forensic analysis, auditing, and troubleshooting by Contractor.

Recovery

The Contractor recovery strategy shall include contingencies for the following scenarios.

Partial or complete loss of production system hardware: In the event of a hardware failure, service can be restored by restoring backup data to a sister server (used for system testing) and configuring it as the production system. Service restoration can be done within one Contractor Business Day of becoming aware of the loss of the server.

Loss of State data caused by the Contractor: If Contractor causes the loss of State data, data shall be restored from the most recent daily snapshot taken prior to the loss. The Contractor commits to informing DEQ of such critical issues within one Contractor Business Day, and will endeavor to restore the lost data within four Contractor Business Days following such notification.

Loss of State data caused by DEQ: In the event of a loss of State data caused by DEQ staff, the Contractor will make reasonable commercial efforts using available professional services hours to restore the data from the best available backup within a time frame mutually agreed to by the Contractor and DEQ.



SCHEDULE D STATEMENT OF WORK (SOW)

1.100 Scope of Work and Deliverables

1.101 In Scope

This contract includes the following scope:

- A. Re-TRAC Connect™ Software Licenses
 - A.1. Leader Account Term Software License
 - A.2. EcoPoint Directory Term Software License
- B. Leader Account
 - B.1. Initiation and Planning
 - B.2. Configuration & Testing
 - B.3. Web-Based Training
 - B.4. Post-Implementation Project Review Meetings
 - B.5. Technical Support
- C. EcoPoint Directory Account
 - C.1. Requirements Gathering, Configuration & Testing
 - C.2. Web-Based Training
 - C.3. Ongoing Professional Services
 - C.4. Technical Support
- D. Future Additional Services

A more detailed description of the software, services (work) and deliverables sought for this project is provided in **Section 1.104, Work and Deliverables**.

1.102 Out Of Scope

This contract excludes the following from scope:

- Hardware procurement
- New software design and development/coding
- Data conversion
- Data verification/validation (all data reported to State must be reviewed and verified by State for accuracy)
- Data migration
- On-site training
- Promotion of training session to reporting entities (to clarify, the State is responsible for promoting training session for reporting entities)
- Direct communication with reporting entities for any purpose other than to respond to a technical support request related to Re-TRAC Connect™ and/or provide training as described in this contract
- State software and/or hardware maintenance
- Maintenance support for any software other than Re-TRAC Connect™

1.103 Environment

The Service Software must run on and be compatible with the State Agency Specific Technical Environment.

Agency Specific Technical Environment:

- Windows 7 Enterprise 64-bit
- Internet Explorer 10

1.104 Work And Deliverables



I. Services and Deliverables To Be Provided

Contractor will provide:

1. Re-TRAC Leader Account (year one):
 - a. One (1) Year Term Software License,
 - b. 136 Hours of Professional Services, and
 - c. 41 Technical Support Hours.
2. Re-TRAC EcoPoint Directory Account containing the following bundled items:
 - a. One (1) Year Term Software License,
 - b. 54 Hours of Professional Services, and
 - c. 2.5 Technical Support Hours.

The State may renew these subscriptions annually. For each annual renewal term following the first year, Contractor will provide:

1. Re-TRAC Leader Account:
 - a. One (1) Year Term Software License,
 - b. 48 Hours of Professional Services, and
 - c. 41 Technical Support Hours.
2. Re-TRAC EcoPoint Directory Account containing the following bundled items:
 - a. One (1) Year Term Software License,
 - b. 26 Hours of Professional Services, and
 - c. 2.5 Technical Support Hours.

The responsibilities, deliverables, and preliminary Dedicated Hours allocations for each phase of this project are outlined in the Services & Deliverables table below.

SERVICES & DELIVERABLES	DEDICATED HOURS	TARGET DATE
A. <u>Re-TRAC Connect Software Licenses</u>		
A.1. Leader Account Term Software License Contractor will provide to the State a Re-TRAC Connect Leader Account Term Software License pursuant to the provisions of the Contract.	N/A	9/11/2014
A.2. EcoPoint Directory Account Term Software License Contractor will provide to the State a Re-TRAC Connect EcoPoint Directory Account Term Software License pursuant to the provisions of the Contract.	N/A	9/11/2014
B. <u>Leader Account (during Initial Term)</u>		
B.1. Initiation and Planning Kick-off Meeting Contractor shall be responsible for leading and facilitating the project Kick-off Meeting in accordance with SOW Section 1.301 . This meeting is intended to clarify key roles and target dates. During this meeting, a review of the project scope, project plan and other relevant information critical to the project's	4	Kick-Off Meeting to be held on or before 09/23/2014



<p>success shall occur. In addition, the Service Software features & functionality may be reviewed if requested by a member of the project team.</p> <ul style="list-style-type: none"> • Team introductions including point of contact • Review project goals and objectives • Review target dates and key milestones • Review Re-TRAC Connect features & functionality • Establish reoccurring meetings schedule per SOW Section 1.301 		
<p>B.1. Deliverable(s)</p> <ul style="list-style-type: none"> • Project Kick-off Meeting and Presentation • SaaS software orientation 		
<p>B.2. Configuration & Testing</p>		
<p>a. Draft Survey Specification</p> <ul style="list-style-type: none"> • Survey and system reporting needs requirements gathering • Assessment & analysis of data collection • Preliminary assessment & analysis of reporting needs • Draft survey configuration <p>Contractor shall provide one (1) survey to the State. This survey shall be similar in form and content to the Vermont Quarterly Disposal, Recycling and Composting Facility Reports Survey (Vermont Survey). During this phase, the Contractor will work with the State to identify the modifications to the Vermont Survey, if any, the State will require to meet its specific data collection needs. The Contractor will then configure the Vermont Survey as the parties agree (Configured Survey).</p> <p>In the event the State determines it needs additional Surveys, the parties will create such surveys pursuant to the terms of SOW Section 1.601.C. Additional Professional Services and Technical Support.</p>	<p>45</p>	<p>10/31/14 to present draft Configured Survey</p>
<p>b. Survey Review & Finalization</p> <ul style="list-style-type: none"> • Present draft Configured Survey • State review of survey • Incorporate applicable client revisions • Present final Configured Survey • Survey acceptance (sign off) by State <p>Upon receiving the draft Configured Survey, the State will review same and advise the Contractor in writing of any necessary revisions within five (5) days. The Contractor will then have ten (10) days to make the requested revisions and present the final configured Survey to the State. Service Preparation, Testing and Acceptance will occur pursuant to the provisions of the Contract.</p>	<p>20</p>	<p>12/15/2014.</p>
<p>c. Survey Testing</p> <ul style="list-style-type: none"> • Survey quality assurance • Launch on production system <p>Contractor will support testing to ensure the final configured survey performs as specified by the State. Service Preparation, Testing and Acceptance will occur pursuant to the provisions of the Contract.</p>	<p>8</p>	<p>12/31/14 launch of final Configured Survey</p>



<p>d. Report Specification</p> <ul style="list-style-type: none"> • Assessment and analysis of reporting needs • Configure applicable standard analytical reports • Draft specialized analytical report (1) • Prepare report(s) specification • Report specification acceptance (sign off) by client 	<p>25</p>	<p>10/31/2014</p>
<p>e. Report Finalization</p> <ul style="list-style-type: none"> • Solutions Manager configures report(s) • Customer reviews report(s) • Report acceptance (sign-off) by client • Launch on production system <p>Upon receiving the draft Configured Reports, the State will review same and advise the Contractor in writing of any necessary revisions within 72 hours. The Contractor will then have five (5) days to make the requested revisions and present the final Configured Reports to the State. Contractor will support testing to ensure the as-built Reports perform as specified by the State. Service Preparation, Testing and Acceptance will occur pursuant to the provisions of Section 4 of the Contract.</p>	<p>20</p>	<p>02/01/15for configured reports.</p>
<p>B.2. Deliverable(s)</p> <ul style="list-style-type: none"> • B2a: Draft Configured Survey • B2b: Final Configured Survey • B2c: Launch Configured Survey • B2d: Draft Configured Report(s) • B2e: Launched Configured System Report(s) <p>B.2. Acceptance Criteria</p> <ul style="list-style-type: none"> • One (1) Final Configured Survey similar in form and content to the Vermont Survey as modified per the gathered requirements. • System reporting functionality conforming to the gathered requirements. • High-level acceptance criteria for Document Deliverables are listed in SOW Section 1.501. • High-level acceptance criteria for the Services are listed in Section 4 of the Contract. 		
<p>B.3. Web-Based Training</p> <p>Contractor will provide one web-based training session for DEQ staff responsible for administration of the recycling program and/or the Leader Account as soon as practicable after the System is configured. Contractor will provide web-based one web-based training session to the reporting entities.</p>	<p>6</p>	<p>TBD based on agreement with State Service Manager</p>
<p>B.3. Deliverable(s)</p> <ul style="list-style-type: none"> • One web-based, dedicated training session for end users • One web-based, dedicated training session for Administrators <p>B.3. Acceptance Criteria</p> <ul style="list-style-type: none"> • Delivery of training with documentation of dates and times 		



<ul style="list-style-type: none"> • High-level acceptance criteria for Document Deliverables are listed in SOW Section 1.501. • High-level acceptance criteria for the Services are listed in Section 4 of the Contract. 		
<p>B.4. Post-Implementation Project Review Meetings</p> <p>After Implementation, Contractor shall be responsible for leading and facilitating four (4) monthly Project Review meetings (up to one hour per meeting). Such meetings will occur on a regular meeting date each month for up to 4 months as agreed upon with the State Service Manager.</p>	8	Meetings to occur on dates TBD
<p>B.4. Deliverable(s)</p> <ul style="list-style-type: none"> • Monthly Project Review Meetings • Reoccurring project status reports <p>B.4. Acceptance Criteria</p> <ul style="list-style-type: none"> • High-level acceptance criteria for Document Deliverables are listed in SOW Section 1.501. • High-level acceptance criteria for the Services are listed in Section 4 of the Contract. 		
<p>B.5. Technical Support</p> <p>Contractor will provide Leader Account technical support to Program Managers and end users (reporting entities) during the term in accordance with Section 6 of the Contract and this SOW. Contractor will not bill the State for any technical support hours provided beyond the 41 hours purchased as part of the subscription.</p> <p>During each year of the Term, Contractor will make available to the State a telephone number (“Hotline”) for State to call and an online form within the Service Software for State to use for the purpose of receiving technical support for assistance to use the Software. The Hotline operates during Contractor Business Hours on each Contractor Business Day. The Hotline or email can also be used to notify Contractor of problems associated with the Service Software and related documentation. Technical Support includes online Frequently Asked Questions (FAQs) and may also web-based general technical support for user’s self-diagnostics.</p> <p>During each year of the Term, the State’s reporting entities (“End Users”) will receive technical support for assistance to use the Service Software via an online form in the Service Software. Technical Support includes online Frequently Asked Questions (FAQs) and may also include web-based general technical support for user’s self-diagnostics.</p>	41	Available during Leader Account license term.
<p>B.5. Deliverable(s)</p> <ul style="list-style-type: none"> • Technical Support <p>B.5. Acceptance Criteria</p> <ul style="list-style-type: none"> • Technical Support in conformance with specifications detailed within Section 6 of the Contract and SOW Section 1.104.I.B.5. Technical 		



<p>Support above.</p> <ul style="list-style-type: none"> High-level acceptance criteria for the Services are listed in Section 4 of the Contract. 		
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C. EcoPoint Directory Account (Initial Term)

<p>C.1. Configuration & Testing</p> <p>Contractor shall during the Initial Term configure the Re-TRAC Connect™ EcoPoint Directory, a web-based publicly available re-use and recycling directory, to support DEQ’s public education efforts (“Directory”). Contractor will assist the State in identifying the types of non-State organizations the State needs included in the Directory. Contractor will configure the Directory for the identified organization types.</p> <p>The Directory will:</p> <ul style="list-style-type: none"> Integrate with a mapping service to enable the public to easily find local facilities and learn about upcoming events. Allow non-State organizations such as local governments, facilities, haulers, etc. to input and publicly share data about their organizations including reuse, recycling, and disposal opportunities. Non-State data includes: organization name and address; title, name, and telephone number of an employee as a contact person for the organization, organization website, list of accepted materials, and hours of operation. Allow the general public to search the Ecopoint Directory and obtain for each non-State organization: organization or event contact information, lists of materials accepted at specific locations or events (if applicable), hours of operation, and directions to specific locations or events. Include the following functional features: <ol style="list-style-type: none"> Join Directory functionality: Non-State organizations may “join” the system as a user and have their information included in the Directory. Directory Management functionality: 1) Directory Managers review and approve data submitted by users to the State’s directory 2) Directory Managers have access to directory usage reports. Message Center functionality: Directory Managers can send messages to users who agree to join and share data with the State. Users have the ability to opt-out of receiving messaging excepting for critical notifications from Re-TRAC Connect™. Allow the following User types: <ol style="list-style-type: none"> “Directory Managers” (full system access) – Each staff member who is designated as a Directory Manager by your organization will be given their own account, which shall include Credentials required in order to access the Service Software. Directory Managers will be able to review all Data submitted to your organization by users who agree to share data with your organization. Five (5) accounts are included. Directory Managers: <ol style="list-style-type: none"> Distribute image (to be used as a button) and code, provided by Contractor, for use on unlimited number of Customer selected websites to link to and access the directory which is embedded on the template web page specified and designed by Contractor. 	<p>43</p>	<p>12/15/14</p>
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<p>(Note: This task is usually performed by a web developer or someone with basic knowledge of HTML, and will require access to the server that is hosting each website. The State is responsible for this optional activity should the State choose to promote the directory on multiple websites.)</p> <ul style="list-style-type: none"> ii. Provide State logo to be presented on template web page. Some restrictions may apply to description length (number of characters). iii. Select a subset of organization types from Re-TRAC Connect to be included in the directory. <p>b. "Users" – These are Re-TRAC Connect end users such as local governments, facilities, haulers, etc. that choose to input and share data with your organization. Users will have the option to join your organization's directory. Users will not be able to access the data submitted by other users or the aggregated information submitted to your account. Users:</p> <ul style="list-style-type: none"> i. Search directory by material and/or by location and radius ranging from fifteen (15) to five hundred (500) miles. Search results will include only the data submitted, and approved by, the Directory Managers. ii. Search results are provided using a mapping service. Accuracy of mapping information is dependent upon the mapping service as provided to Contractor, and accuracy of directory listings are dependent upon data entered by users (Contractor does not verify the accuracy of the directory listings provided by users). 		
<p>C.1. Deliverable(s)</p> <ul style="list-style-type: none"> • Facilitated session(s) to confirm and finalize the State's Directory configuration specification • Configured EcoPoint Directory • Launched EcoPoint Directory <p>C.1. Acceptance Criteria</p> <ul style="list-style-type: none"> • High-level acceptance criteria for Document Deliverables are listed in SOW Section 1.501. • High-level acceptance criteria for the Services are listed in Section 4 of the Contract. • EcoPoint Directory functionality conforming to the configuration requirements. 		
<p>C.2. Web-Based Training</p> <p>Contractor shall provide two web-based training sessions for DEQ staff responsible for administration of the recycling program and/or the EcoPoint Directory Account, as designated by the DEQ Project Manager, in accordance with the timing determined in agreement with the State Service Manager.</p>	8	12/15/14
<p>C.2. Deliverable(s)</p> <ul style="list-style-type: none"> • One web-based, dedicated Administrator/End-User training session for DEQ staff responsible for administration of the recycling program and/or the EcoPoint Directory Account as designated by the State. <p>C.2. Acceptance Criteria</p>		



<ul style="list-style-type: none"> • Delivery of training with documentation of dates and times. • High-level acceptance criteria for Document Deliverables are listed in SOW Section 1.501. • High-level acceptance criteria for the Services are listed in Section 4 of the Contract. 		
<p>C.3. Technical Support</p> <p>Contractor will provide EcoPoint Directory Account technical support to Program Managers and end users (reporting entities) during the term in accordance with Section 6 of the Contract and this SOW. Contractor will not bill the State for any technical support hours provided beyond the 2.5 hours included in the subscription.</p> <p>During each year of the Term, Contractor will make available to the State a telephone number (“Hotline”) for the State to call and an online form within the Service Software for the State to use for the purpose of receiving technical support for assistance to use the Service Software. The Hotline operates during Contractor Business Hours on each Contractor Business Day. The Hotline or email can also be used to notify Contractor of problems associated with the Service Software and related documentation. Technical Support includes online Frequently Asked Questions (FAQs) and may also include web-based general technical support for user’s self-diagnostics.</p> <p>During each year of the Term, the State’s reporting entities (“End Users”) will receive technical support for assistance to use the Service Software via an online form in the Service Software. Technical Support includes online Frequently Asked Questions (FAQs) and may also include web-based general technical support for user’s self-diagnostics.</p>	<p>2.5</p>	<p>Available during EcoPoint Directory Account license term.</p>
<p>C.4. Deliverable(s)</p> <ul style="list-style-type: none"> • Technical Support <p>C.4. Acceptance Criteria</p> <ul style="list-style-type: none"> • Technical Support in conformance with specifications detailed within Section 6 of the Contract and SOW Section 1.104.I.B.5. Technical Support above. • High-level acceptance criteria for the Services are listed in Section 4 of the Contract. 		
<p>D. <u>Future Professional Services</u></p>		
<p>The parties hereby establish a mechanism for Future Professional Services, whereby the State may request additional professional services to configure surveys and/or reports for the State’s needs.</p> <p>During the life of the Contract, upon request and at the State’s sole option, the Contractor will provide additional professional services. To obtain Future Professional Services the State will submit a SOW to the Contractor for the additional services requested. For each such SOW received from the State, the Contractor will provide a written proposal and a proposed project schedule.</p>	<p>TBD through future Statements of Work</p>	<p>TBD through future Statements of Work</p>



<p>Contractor will derive its written proposal using first any not yet allocated Professional Services hours included in the flat fee Subscription and then the labor rates described in SOW Section 1.601.C. Additional Professional Services and Technical Support.</p> <p>Upon review and written approval of the written proposal and project schedule by the DTMB Project Manager and Agency Project Manager, the Agency will submit a contract change request to DTMB Procurement in accordance with Section 1.403 Change Management. Upon review and written approval by DTMB Procurement, and the State Administrative Board if required, a Contract Change Notice will be executed. A fully executed Contract Change Notice is required prior to issuance of any Purchase Order, and a Purchase Order is required prior to Contractor providing any Future Professional Services.</p>		
<p>D. Deliverable(s)</p> <ul style="list-style-type: none"> • Written Proposal including project schedule • Firm-Fixed Price Quote • Professional Services upon the State’s request <p>D. Acceptance Criteria</p> <ul style="list-style-type: none"> • Professional Services meeting requirements conforming to each respective Statement of Work, Written Proposal, and Project Plan. • High-level acceptance criteria for Document Deliverables are listed in SOW Section 1.501. • High-level acceptance criteria for the Services are listed in Section 4 of the Contract. 		

Dedicated Year One (Initial Term) Hours Reallocations

Leader Account. The parties have preliminarily allocated 118 hours to **B.2. Configuration & Testing**, 6 hours to **B.3. Web-Based Training**, and 8 hours to **B.4. Post-Implementation Project Review Meetings** above, 132 aggregate hours. The parties recognize that after the parties gather and elicit the Leader Account survey and reporting requirements, it may be necessary to reallocate the remaining balance of those 132 aggregate hours to ensure Contractor can provide those categories’ deliverables in accordance with the gathered requirements. Therefore, at any time after the parties gather and elicit these requirements, the parties may agree to reallocate the remaining B.2., B.3., and B.4. dedicated hours among the B.2., B.3., and B.4. line items provided, however, that the parties may not exceed the 132 aggregate hours allocated to those categories. Such reallocation will require a written agreement between the Contractor and Agency Project Manager but will not require a contract amendment.

EcoPoint Directory Account. The parties have preliminarily allocated 43 hours to **C.1. Requirements Gathering, Configuration & Testing**; 11 hours to **C.2. Web-Based Training** above, 54 aggregate hours. The parties recognize that after the parties gather and elicit the EcoPoint Directory Account organization and data requirements, it may be necessary to reallocate the remaining balance of those 54 aggregate hours to ensure Contractor can provide those categories’ deliverables in accordance with the gathered requirements. Therefore, at any time after the parties gather and elicit these requirements, the parties may agree to reallocate the remaining C.1. and C.2. dedicated hours among the C.1. and C.2. line items provided, however, that the parties may not exceed the 54 aggregate hours allocated to those categories. Such reallocation will require a written agreement between the Contractor and Agency Project Manager but will not require a contract amendment.



Rollover Hours

In the event the State finishes an annual Leader Account Term and/or an annual EcoPoint Directory Account Term without using all of the respective account's allocated hours for that or a prior term and the State opts to renew its annual subscription, the State may reallocate such unused hours in such future subscription terms without incurring additional expense.

Hours Allocation for Renewal Terms (if any)

The parties agree to allocate professional services hours during a Renewal Term Kick-Off Meeting.

Leader Account: 48 hours would be available to allocate to configuration annual changes (survey dates, new survey fields), training, and general client service during the annual renewal term based on State needs.

EcoPoint Directory Account: 26 hours would be available to allocate to general client service including training during the annual renewal term based on State needs.

1.200 Roles and Responsibilities

1.201 Contractor Staff, Roles, And Responsibilities

A. Contractor Staff

The Contractor will provide sufficient qualified staffing to satisfy the deliverables of this SOW.

Contractor hereby designates Jennifer Peters, Operations Manager (Email: jen@emergeknowledge.com, Direct phone: 1-204-772-7239 ext 805) as its Single Point of Contact (SPOC). The duties of the SPOC shall include, but not be limited to:

- supporting the management of the Contract,
- facilitating dispute resolution, and
- advising the State of performance under the terms and conditions of the Contract.

The State reserves the right to require a change in the current SPOC if the assigned SPOC is not, in the opinion of the State, adequately serving the needs of the State.

Any key staff substitution must have the prior approval of the State subject to the provisions in this contract. The State has identified the following as key personnel for this project:

- *Solutions Manager: Jerett Bogue*

The Contractor designates Jerett Bogue as *Solutions Manager* to interact with the designated personnel from the State to insure a smooth transition to the new system. The Solutions Manager will coordinate all of the activities of the Contractor personnel assigned to the project. The Contractor's Solutions Manager responsibilities include, at a minimum:

- Manage all defined Contractor responsibilities in this Scope of Services.
- Manage Contractor's subcontractors, if any
- Develop the project plan and schedule, and update as needed
- Serve as the point person for all project issues
- Coordinate and oversee the day-to-day project activities of the project team
- Assess and report project feedback and status
- Escalate project issues, project risks, and other concerns
- Review all project deliverables and provide feedback
- Proactively propose/suggest options and alternatives for consideration
- Utilize change control procedures
- Prepare project documents and materials
- Manage and report on the project's budget



1.202 State Staff, Roles, And Responsibilities

The State project team will consist of Executive Subject Matter Experts (SME’s), project support, a DTMB Project Manager and an Agency Project Manager.

Executive Subject Matter Experts

Executive SME’s representing the business units involved will provide the vision for the business design and how the application shall advance that vision. Such Executive SME’s shall be available on an as-needed basis and will be empowered to:

- Resolve project issues in a timely manner
- Review project plan, status, and issues
- Resolve deviations from project plan
- Provide acceptance sign-off
- Utilize change control procedures
- Ensure timely availability of State resources
- Make key implementation decisions, as identified by the Contractor’s project manager, within 48-hours of their expected decision date.

Name	Agency/Division	Title	Phone/e-mail
Rhonda Oyer	DEQ/OWMRP	Chief, Sustainable Materials Management Unit	(517) 284-6591 Oyerr@michigan.gov
Steven Noble	DEQ/OWMRP	Program Coordinator-Electronics Take Back Program	(517) 284-6589 Nobles4@michigan.gov

State Project Manager- (DEQ)

DEQ will provide a Project Manager who will be responsible for the State’s infrastructure and coordinate with the Contractor in determining the system configuration.

The State’s Project Manager will provide the following services:

- Provide State facilities, as needed
- Coordinate the State resources necessary for the project
- Facilitate coordination between various external contractors
- Facilitate communication between different State departments/divisions
- Provide acceptance and sign-off of deliverable/milestone
- Review and sign-off of invoices
- Resolve project issues
- Escalate outstanding/high priority issues
- Utilize change control procedures
- Conduct regular and ongoing review of the project to confirm that it meets original objectives and requirements
- Document and archive all important project decisions
- Arrange, schedule and facilitate State staff attendance at all project meetings.

Name	Agency/Division	Title
Steven Noble	DEQ	Project Manager

DTMB shall provide a Contract Administrator whose duties shall include, but not be limited to, supporting the management of the Contract.



Name	Agency/Division	Title
Jarrod Barron	DTMB	Contract Administrator

1.203 Reserved

1.300 Project Plan

1.301 Project Plan Management

Kick-Off Meeting

Within fourteen (14) calendar days of the Effective Date of the Contract, the Contractor will be required to lead and facilitate a Kick-off meeting to discuss the content and procedures of the Contract. The meeting will be held via web conference or teleconference at a date and time mutually acceptable to the State and the Contractor. The State shall bear no cost for the travel of the Contractor for attendance at the meeting (the Contractor will not travel to participate in this meeting)

Reoccurring Meetings

Throughout the course of performing the Work and Deliverables in this SOW, the Contractor shall be responsible for leading and facilitating all meetings as necessary to ensure proper communication and project success. The meetings will be held via web conference or teleconference on a schedule as mutually agreed by the State and the Contractor as the parties determine to be needed from time to time thereafter the Kick-off Meeting. Specific meeting types include, but are not limited to:

- Status meetings
- Configuration meetings
- Review meetings
- Finalization meetings

1.302 Reports

Reoccurring Status Reports

Reporting formats must be submitted to the State’s Project Manager for approval within twenty-one (21) calendar days of the Effective Date of the Contract. Once both parties have agreed to the format of the reports, they shall become the standard to follow for the duration of the contract. Throughout the course of performing the Work and Deliverables in this SOW, Contractor will produce monthly project status reports containing the following criteria: Activities undertaken during the reporting period, Difficulties Encountered (if any) and Remedial Actions Taken, Activities Anticipated for the Next Reporting Period (if any), and a Summary of Professional Services Hours worked during the reporting period, during the subscription term year to date, and professional services hours remaining (available) in the subscription term.

1.400 Change Management

1.401 Change Management

Change management is defined as the process to communicate, assess, monitor, and control all changes to system resources and processes. The State also employs change management in its administration of the Contract.

If a proposed contract change is approved by the Agency, the Contract Administrator will submit a request for change to the Department of Technology, Management and Budget, Procurement Buyer, who will make recommendations to the Director of DTMB-Procurement regarding ultimate approval/disapproval of change request. If the DTMB Procurement Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the DTMB-Procurement Buyer will issue an addendum to



the Contract, via a Contract Change Notice. **Contractors who provide products or services prior to the issuance of a Contract Change Notice by the DTMB-Procurement, risk non-payment for the out-of-scope/pricing products and/or services.**

The Contractor must employ change management procedures to handle such things as “out-of-scope” requests or changing business needs of the State.

1.500 Acceptance

1.501 Criteria

Document Deliverables

1. Documents are dated and in electronic format, compatible with State of Michigan software in accordance with Article 1.302.
2. Draft documents are not accepted as final deliverables.
3. The documents will be reviewed and accepted in accordance with the requirements of the Contract and Attachments.
4. DTMB will review documents within the timeframes described in this contract.
 - a. Approvals will be written and signed by State Project Manager.
 - b. Issues will be documented and submitted to the Contractor.
 - c. After issues are resolved or waived, the Contractor will resubmit documents for approval within the timeframes described in this contract.

Services Deliverables

1. High-level acceptance criteria for the Services are listed in **Section 4** of the Contract.

1.502 Final Acceptance

Final acceptance is expressly conditioned upon completion **on an annual subscription basis** of ALL deliverables/milestones; completion of ALL tasks in the project plan(s) as approved; completion of ALL applicable inspection and/or testing procedures; and the certification by the State that the Contractor has met the defined requirements, including the requirements to be gathered during the performance of this SOW.

1.600 Compensation and Payment

1.601 Compensation And Payment

A. Leader Account Fees

A.1 The Fees for the Initial Term shall be as follows:

Year One	Dedicated Hours Included	Cost
Re-TRAC Connect™ Leader Account Software License base license fee	n/a	\$ 18,904.00
Professional Services	136	\$ 17,112.00
Technical Support	41	\$ 3,690.00
Total Year One Set up and Subscription Fee	\$39,706.00	



A.2. The Fees for up to two (2) consecutive Renewal Terms (if any) shall be as follows:

Year Two (Renewal)	Dedicated Hours Included	Cost
Re-TRAC Connect™ Leader Account Software License base license fee	n/a	\$ 18,904.00
Professional Services	48	\$ 6,034.00
Technical Support	41	\$ 3,690.00
Total Year Two Subscription Fee	\$28,628.00	

Year Three (Renewal)	Dedicated Hours Included	Cost
Re-TRAC Connect™ Leader Account Software License base license fee	n/a	\$ 18,904.00
Professional Services	48	\$ 6,034.00
Technical Support	41	\$ 3,690.00
Total Year Three Subscription Fee	\$28,628.00	

B. EcoPoint Directory Account Fees

B.1 The Fees for the Initial Term shall be as follows:

Year One	Dedicated Hours Included	Cost
Re-TRAC Connect™ Directory Account Software License base license fee	n/a	\$1,000.00
Professional Services*	54	\$6,750.00
Technical Support	2.5	\$225.00
Total Year One Set up and Subscription Fee	\$7,975.00	

*Excludes importing historical data.

B.2 The Fees for up to two (2) consecutive Renewal Terms (if any) shall be as follows:

Year Two (Renewal)	Dedicated Hours Included	Cost
Re-TRAC Connect™ Directory Account Software License base license fee	n/a	\$1,000.00
Professional Services	26	\$3,250.00
Technical Support	2.5	\$225
Total Year Two Subscription Fee	\$4,475.00	

Year Three (Renewal)	Dedicated Hours Included	Cost
Re-TRAC Connect™ Directory Account Software License base license fee	n/a	\$1,000.00
Professional Services	26	\$3,250.00
Technical Support	2.5	\$225
Total Year Three Subscription Fee	\$4,475.00	

C. Additional Professional Services and Technical Support

C.1 Labor Rates. If Customer requires any additional Professional Services beyond the number of hours included in the annual fees paid, Contractor shall provide such Professional Services in 2014 at the rates set out in the table below, and in future years at the Contractor’s commercial labor rates for the applicable calendar year.



Labor Category	2014 Hourly
Solutions Manager	\$ 130.00
Senior Solutions Manager	\$
Systems Analyst	\$ 90.00
Senior Systems Analyst	\$ 120.00
Principal Systems Analyst	\$ 170.00
Junior Computer Programmer	\$ 70.00
Computer Programmer	\$ 90.00
Senior Computer Programmer	\$ 110.00
Quality Assurance Analyst	\$ 90.00
Technical Support	\$ 90.00
Web Designer	\$ 110.00

Method of Payment:

The project will be paid on a deliverables basis on the following schedule:

DELIVERABLE PER SOW SECTION 1.104	PAYMENT TIMING
A. Re-TRAC Connect™ Software Licenses	
A.1. Leader Account Term Software License base license fee	Upon Contract Execution
A.2. EcoPoint Directory Term Software License base license fee	Upon Contract Execution
B. Leader Account (Initial Term)	
B.1. Initiation and Planning	Upon B.1. Acceptance
B.2. Configuration & Testing	Upon B.2. Acceptance
B.3. Web-Based Training	Upon B.3. Acceptance
B.4. Post-Implementation Project Review Meetings	Upon B.4. Acceptance
B.5. Technical Support	Upon B.2c. Acceptance
C. EcoPoint Directory Account (Initial Term)	
C.1. Requirements Gathering, Configuration & Testing	Upon C.1. Acceptance
C.2. Web-Based Training	Upon C.2. Acceptance
C.3. Ongoing Professional Services	Upon C.3. Acceptance
C.4. Technical Support	Upon C.1. Acceptance
D. Future Professional Services	TBD through future SOW's
Re-TRAC Connect™ Leader Account Renewal (if any)	Within ten (10) days of the start of the Renewal Term
Re-TRAC Connect™ EcoPoint Directory Account Renewal (if any)	Within ten (10) days of the start of the Renewal Term

Travel:

The State will not pay for any travel expenses, including hotel, mileage, meals, parking, etc. Travel time will not be reimbursed.

Revised Lower Pricing:

If Contractor reduces its commercial prices for the Re-TRACT Connect™ Leader Account for the State of Michigan or services during the term of this Contract, the State shall have the immediate benefit of such lower prices for new purchases **excepting that the preferred (reduced) GSA pricing offered by the Contractor**



through the U.S. General Services Administration (GSA) will not extend to the State. Contractor shall send notice to the State's DTMB Contract Administrator with the reduced prices (not including GSA pricing) within fifteen (15) Business Days of the reduction taking effect.

Statements of Work and Issuance of Purchase Orders:

The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract, and any future amendments thereof, will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a SOW until authorized via a PO issued against this Contract. Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it. Unless otherwise agreed by the parties, each SOW will include:

1. Background
2. Project Objective
3. Scope of Work
4. Deliverables
5. Acceptance Criteria
6. Project Control and Reports
7. Specific Department Standards
8. Payment Schedule
10. Project Contacts
11. Agency Responsibilities and Assumptions
12. Location of Where the Work is to be performed

Invoicing:

Contractor will submit properly itemized invoices to:

DTMB – Financial Services
Accounts Payable
P.O. Box 30026
Lansing, MI 48909
or

DTMB-Accounts-Payable@michigan.gov

Invoices must provide and itemize, as applicable:

- Contract number;
- Purchase Order number;
- Contractor name, address, phone number, and Federal Tax Identification Number;
- Price for each software license, professional services, and technical support services , or Contractor's list price for each item;
- Total invoice price; and
- Payment terms, including any available prompt payment discount.

Incorrect or incomplete invoices will be returned to Contractor for correction and reissue.

1.602 Holdback

The State shall have the right to hold back an amount equal to ten percent (10%) of all amounts invoiced by Contractor for Services/Deliverables within an annual subscription term. The amounts held back shall be released to Contractor after the State has granted Final Acceptance on an annual basis.