Form No. DTMB-3522 (Rev. 10/2015)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract change will not be executed unless form is filed

STATE OF MICHIGAN

DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET

PROCUREMENT

525 W. ALLEGAN STREET
LANSING, MI 48933

P.O. BOX 30026
LANSING, MI 48909

NOTICE OF CONTRACT NO. **071B6600131**

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Mothic LLC	Timothy Shamilov	tim@mothic.com
341 James SE. #2	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
Grand Rapids, MI 49503	(616) 617-5658	0164

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER	DTMB - eMichigan	Suzanne Pauley	517-242-8745	PauleyS@michigan.gov
CONTRACT ADMINISTRATOR	DTMB - Procurement	Christine Mitchell	517-284-7020	Mitchellc4@michigan.gov

CONTRACT SUMMARY

Com-code 920-40

DESCRIPTION:

Pre-Qualification Program for Development of Mobile Applications – Enterprise DTMB CSS

INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 Years	06/06/2016	06/05/2019	4; 1-Yr
PAYMENT TERMS	F.O.B.	SHIPPED TO	
Net 45	NA	NA	

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

MINIMUM DELIVERY REQUIREMENTS

NA

MISCELLANEOUS INFORMATION

This Contract is awarded from competitive solicitation #007115B0006009 for Pre-Qualification for Mobile Application Development published in Buy4Michigan. Statements of Work for new applications to be developed under this program will be posted on Buy4Michigan to all Pre-Qualified companies for award and PO issuance.

ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION	TBD

For the Contractor:

_____ _____

Timothy Shamilov, Project Manager
Mothic LLC

Date

For the State:

_____ _____

,

Date

State of Michigan

STATE OF MICHIGAN

CONTRACT TERMS
CUSTOM SOFTWARE DEVELOPMENT

This CUSTOM SOFTWARE DEVELOPMENT CONTRACT (this "**Contract**") is agreed to between the State of Michigan (the "**State**") and Gravity Works ("**Contractor**"), a Michigan Corporation. This Contract is effective on 6/2/2016 ("**Effective Date**"), and unless earlier terminated, will expire on 6/1/2019 (the "**Term**").

This Contract may be renewed for up to four (4) additional one (1) year period(s). Renewal must be by written agreement of the parties, and will automatically extend the Term of this Contract.

The parties agree as follows:

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

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

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

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

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

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

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

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

"**Background Technology**" means all Software, data, know-how, ideas, methodologies, specifications, and other technology in which Contractor owns such Intellectual Property Rights as are necessary for Contractor to grant the rights and licenses set forth in **Section 14.1**, and for the State (including its licensees, successors and assigns) to exercise such rights and licenses, without violating any right of any Third Party or any Law or incurring any payment obligation to any Third Party. Background Technology must: (a) be identified as Background Technology in the Statement of Work; and (b) have been developed or otherwise acquired by Contractor prior to the date of the RFP.

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

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

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

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

"**Change Notice**" has the meaning set forth in **Section 2.4(b)**.

"**Change Proposal**" has the meaning set forth in **Section 2.4(a)**.

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

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

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

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

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

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

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

"**Deliverables**" means all Software Deliverables and all other documents, Work Product, and other materials that Contractor is required to or otherwise does provide to the State under this

Contract and otherwise in connection with any Services, including all items specifically identified as Deliverables in the Statement of Work.

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

"**Dispute Resolution Procedure**" means the procedure for resolving disputes under this Contract as set forth in **Section 28**.

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

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

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

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

"Financial Audit Period" has the meaning set forth in **Section 26.1**.

"**Force Majeure**" has the meaning set forth in **Section 29.8**.

"**Harmful Code**" means any: (a) virus, trojan horse, worm, backdoor or other software or hardware devices the effect of which is to permit unauthorized access to, or to disable, erase, or otherwise harm, any computer, systems or software; or (b) time bomb, drop dead device, or other software or hardware device designed to disable a computer program automatically with the passage of time or under the positive control of any Person, or otherwise deprive the State of its lawful right to use such Software.

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

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

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

"**Intellectual Property Rights**" means all or any of the following: (a) patents, patent disclosures, and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the associated goodwill; (c) copyrights and copyrightable works (including computer programs), mask

works and rights in data and databases; (d) trade secrets, know-how and other confidential information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable Law in any jurisdiction throughout the world.

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

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

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

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

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

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

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

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

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

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

"**Open-Source License**" has the meaning set forth in **Section 3.3**.

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

"**Permitted Subcontractor**" has the meaning set forth in **Section 5.5**.

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

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

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

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

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

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

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

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

"**Source Code**" means the human readable source code of the Software to which it relates, in the programming language in which such Software was written, together with all related flow charts and technical documentation, including a description of the procedure for generating object code, all of a level sufficient to enable a programmer reasonably fluent in such programming language to understand, operate, support, maintain and develop modifications, upgrades,

updates, enhancements, improvements and new versions of, and to develop computer programs compatible with, such Software.

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

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

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

"**State Materials**" means all materials and information, including documents, data, know-how, ideas, methodologies, specifications, software, content and technology, in any form or media, directly or indirectly provided or made available to Contractor by or on behalf of the State in connection with this Contract, whether or not the same: (a) are owned by the State, a Third Party or in the public domain; or (b) qualify for or are protected by any Intellectual Property Rights.

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

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

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

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

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

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

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

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

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

"**Third-Party Materials**" means any materials and information, including documents, data, know-how, ideas, methodologies, specifications, software, content, and technology, in any form

or media, in which any Person other than the State or Contractor owns any Intellectual Property Right, but excluding Open-Source Components.

"**Transition Period**" has the meaning set forth in **Section 15.3**.

"**Transition Responsibilities**" has the meaning set forth in **Section 15.3**.

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

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

"**Warranty Period**" means, for any Software, the ninety (90) calendar-day period commencing (a) in the case of Aggregate Software, upon the State's Acceptance; and (b) in the case of any updates, upgrades, new versions, new releases, enhancements and other modifications to previously-Accepted Aggregate Software, upon the State's receipt of such modification.

"**Work Product**" means all Software, Documentation, Specifications, and other documents, work product and related materials, that Contractor is required to, or otherwise does, provide to the State under this Contract, together with all ideas, concepts, processes, and methodologies developed in connection with this Contract whether or not embodied in this Contract.

2. Statements of Work. Contractor shall provide Services and Deliverables pursuant to Statements of Work entered into under this Contract. No Statement of Work shall be effective unless signed by each party's Contract Administrator. The term of each Statement of Work shall commence on the parties' full execution of the Statement of Work and terminate when the parties have fully performed their obligations. The terms and conditions of this Contract will apply at all times to any Statements of Work entered into by the parties and attached as a schedule to this Contract. The State shall have the right to terminate such Statement of Work as set forth in **Section 15**. Contractor acknowledges that time is of the essence with respect to Contractor's obligations under each Statement of Work and agrees that prompt and timely performance of all such obligations in accordance with this Contract and the Statements of Work (including the Implementation Plan and all Milestone Dates) is strictly required.

2.1 Statement of Work Requirements. Each Statement of Work will include the following:

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

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

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

(d) a detailed description of the Software and other Work Product to be developed or otherwise provided under this Contract, including the:

(i) Business Requirements Specification;

(ii) Technical Specification; and

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

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

(f) Fees payable under this Contract, the manner in which such Fees will be calculated, the due dates for payment and any invoicing requirements, including any Milestones on which any such Fees are conditioned, and such other information as the parties deem necessary;

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

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

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

2.2 Initial Statement of Work. The Initial Statement of Work is attached as **Schedule A** to this Contract. Commencing on the Effective Date, Contractor shall perform the Services set forth in **Schedule A** for purposes of creating and providing to the State Contractor's proposal for developing Software that meets all criteria set forth in the Business Requirements Specification.

2.3 Additional Statements of Work. Promptly following receipt of the State's request for additional Software development or other Services, Contractor shall provide the State with a proposal containing all information specified in **Section 2.1**. Upon the parties' agreement with respect to the terms of such proposal, all such terms shall be incorporated in a Statement of Work and each party shall cause the same to be signed by its Contract Administrator. Each fully executed Statement of Work shall be attached as a Schedule to, and by this reference incorporated in and made a part of, this Contract.

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

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

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

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

(iii) any additional Third-Party Materials, Open-Source Components, and State Resources Contractor deems necessary to carry out such Changes; and

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

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

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

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

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

(iii) initiate a Dispute Resolution Procedure; or

(iv) notwithstanding any provision to the contrary in the Statement of Work, terminate this Contract for cause under **Section 15.1**.

(d) No Change will be effective until the parties have executed a Change Notice. Except as the State may request in its Change Request or otherwise in writing, Contractor must continue to perform its obligations in accordance with the Statement of Work pending negotiation

and execution of a Change Notice. Contractor will use its best efforts to limit any delays or Fee increases from any Change to those necessary to perform the Change in accordance with the applicable Change Notice. Each party is responsible for its own costs and expenses of preparing, evaluating, negotiating, and otherwise processing any Change Request, Change Proposal, and Change Notice.

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

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

3. Software. Contractor will design, develop, create, test, deliver, install, configure, integrate, customize and otherwise provide and make fully operational Software as described in the Statement of Work on a timely and professional basis in accordance with all terms, conditions, and Specifications set forth in this Contract and the Statement of Work.

3.1 Software Specifications. Contractor will ensure all Software complies with the Specifications. Contractor will provide all Software to the State in both Object Code and Source Code form.

3.2 Third-Party Materials.

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

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

3.3 Open-Source Components. Contractor will not include in any Software, and operation of all Software in accordance with its Specifications and Documentation will not require the use of, any Open-Source Components, other than Approved Open-Source Components, which must be specifically approved by the State and identified and described in the Statement of Work, and

for which the relevant open-source license(s) (each, an "**Open-Source License**") are attached as exhibits to the Statement of Work. Contractor will provide the State with the Source Code for Approved Open-Source Components in accordance with the terms of the Open-Source License(s) at no cost to the State.

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

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

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

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

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

5.1 State Standards.

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

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

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

5.2 Contractor Personnel.

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

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

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

(ii) require such Contractor Personnel to execute written agreements, in form and substance acceptable to the State, that bind such Contractor Personnel to confidentiality provisions that are at least as protective of the State's information (including all Confidential Information) as those contained in this Contract and Intellectual Property Rights provisions that grant the State rights in the Work Product consistent with the provisions of **Section 13.1** and, upon the State's request, provide the State with a copy of each such executed Contract; and

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

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

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

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

(a) Contractor's Project Manager must:

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

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

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

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

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

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

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

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

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

5.4 Contractor's Key Personnel.

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

(b) Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("**Unauthorized Removal**"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under **Section 15.1**.

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

(i) For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the credit amount will be $3% of Purchase Order (PO) value rounded to nearest 1,000 per individual if Contractor identifies a replacement approved by the State and assigns the replacement to shadow the Key Personnel who is leaving for a period of at least 30 calendar days before the Key Personnel's removal.

(ii) If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 calendar days, in addition to the $3% of the PO value, Contractor will credit the State $[value above divided by 30] per calendar day for each day of the 30 calendar-day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to $3% of PO value rounded to nearest 1,000 maximum per individual. The total Unauthorized Removal Credits that may be assessed per Unauthorized Removal and failure to provide 30 calendar days of shadowing will not exceed $[2 times the amount listed above] per individual.

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

5.5 Subcontractors. Contractor will not, without the prior written approval of the State, which consent may be given or withheld in the State's sole discretion, engage any Third Party to

perform Services (including to create any Work Product). The State's approval of any such Third Party (each approved Third Party, a "**Permitted Subcontractor**") does not relieve Contractor of its representations, warranties or obligations under this Contract. Without limiting the foregoing, Contractor will:

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

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

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

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

(i) obtain from such Permitted Subcontractor confidentiality, work-for-hire and intellectual property rights assignment agreements, in form and substance acceptable by the State, giving the State rights consistent with those set forth in **Section 13.1** and **Section 21** and, upon request, provide the State with a fully-executed copy of each such contract; and

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

6. State Obligations.

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

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

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

6.2 State Project Manager. Throughout the Term of this Contract, the State will maintain a State employee to serve as the State's Project Manager under this Contract. The State's Project Manager will be identified in the Statement of Work. The State's Project Manager or designee

will attend regularly scheduled meetings as set forth in the Implementation Plan and will otherwise be available as set forth in the Statement of Work.

7. Pre-Delivery Testing.

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

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

(b) scan such Software Deliverable using the most up-to-date scanning software and definitions to confirm it is free of Harmful Code;

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

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

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

8. Delivery and Installation.

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

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

9. Acceptance Testing; Acceptance.

9.1 Acceptance Testing.

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

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

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

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

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

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

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

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

(a) If such notice is provided by either party and identifies any Non-Conformities, the parties' rights, remedies, and obligations will be as set forth in **Section 9.3** and **Section 9.4**.

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

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

(i) notify Contractor in writing of Non-Conformities the State has observed in the Software Deliverable or, in the case of Integration Testing, Aggregate Software, and of the State's non-acceptance thereof, whereupon the parties' rights, remedies and obligations will be as set forth in **Section 9.3** and **Section 9.4**; or

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

9.3 Failure of Acceptance Tests. If Acceptance Tests identify any Non-Conformities, Contractor, at Contractor's sole cost and expense, will remedy all such Non-Conformities and re-deliver the Software Deliverables, in accordance with the requirements set forth in the Statement of Work. Redelivery will occur as promptly as commercially possible and, in any case, within thirty (30) Business Days following, as applicable, Contractor's:

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

(b) receipt of the State's notice under **Section 9.1(a)** or **Section 9.2(c)(i)**, identifying any Non-Conformities.

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

(a) continue the process set forth in this **Section 9**;

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

(c) deem the failure to be a non-curable material breach of this Contract and the Statement of Work and terminate this Contract for cause in accordance with **Section 15.1**.

9.5 Acceptance. Acceptance ("**Acceptance**") of each Software Deliverable (subject, where applicable, to the State's right to Integration Testing) and Aggregate Software will occur on the date that is the earliest of the State's delivery of a notice accepting such Software Deliverable under **Section 9.2(b)**, or **Section 9.2(c)(ii)**.

10. Training; Maintenance and Support.

10.1 Training. With respect to all Software, Contractor will provide the State with training as set forth in the Statement of Work. All training set forth in the Statement of Work will be provided at no additional charge to the State, it being acknowledged and agreed that the development and other Fees include full consideration for such services. The State may request, and if so requested, Contractor must provide on a timely basis, additional training at the rates specified in the Pricing Schedule set forth in **Schedule B**.

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

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

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

11. Fees.

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

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

11.3 Administrative Fee And Reporting.

(a) The Contractor must remit an administrative fee of **1%** on all payments remitted to Contractor under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions). Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales.

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

The Department of Technology, Management and Budget
Financial Services – Cashier Unit
Lewis Cass Building
320 South Walnut St.
P.O. Box 30681
Lansing, MI 48909

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

12. Invoices and Payment.

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

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

(b) list each Fee item separately;

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

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

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

12.2 Payment. Invoices are due and payable by the State, in accordance with the State's standard payment procedures as specified in 1984 Public Act no. 279, MCL 17.51, *et seq*., within forty-five (45) calendar days after receipt, provided the State determines that the invoice was properly rendered. The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at

http://www.michigan.gov/cpexpress to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment.

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

12.4 Withhold Remedy. In addition and cumulative to all other remedies in law, at equity and under this Contract, if Contractor is in material default of its performance or other obligations under this Contract and fails to cure the default within fifteen (15) calendar days after receipt of the State's written notice of default, the State may, without waiving any other rights under this Contract, elect to withhold from the payments due to Contractor under this Contract during the period beginning with the sixteenth (16th) calendar 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 Services 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.

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

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

12.7 Support Not to be Withheld or Delayed. Contractor will not withhold, delay, or fail to perform any Services or obligations under this Contract by reason of the State's good faith withholding of any payment or amount in accordance with this **Section 12**.

13. Intellectual Property Rights.

13.1 State Ownership of Work Product. Except as set forth in **Section 13.3**, the State is and will be the sole and exclusive owner of all right, title, and interest in and to all Work Product, including all Intellectual Property Rights. In furtherance of the foregoing, subject to **Section 13.3**:

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

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

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

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

13.2 Further Actions. Contractor will, and will cause the Contractor Personnel to, take all appropriate action and execute and deliver all documents, necessary or reasonably requested by the State to effectuate any of the provisions or purposes of **Section 13.1**, or otherwise as may be necessary or useful for the State to prosecute, register, perfect, record, or enforce its rights in or to any Work Product or any Intellectual Property Right therein. Contractor hereby appoints the State as Contractor's attorney-in-fact with full irrevocable power and authority to take any such actions and execute any such documents if Contractor refuses, or within a period deemed reasonable by the State otherwise fails, to do so.

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

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

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

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

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

14. Licenses.

14.1 Background Technology License. Contractor hereby grants to the State such rights and licenses with respect to the Background Technology that will allow the State to use and otherwise exploit perpetually throughout the universe for all or any purposes whatsoever the Work Product, to the same extent as if the State owned the Background Technology, without incurring any fees

or costs to Contractor (other than the Fees set forth under this Contract) or any other Person in respect of the Background Technology. In furtherance of the foregoing, such rights and licenses will:

(a) be irrevocable, perpetual, fully paid-up and royalty-free;

(b) include the rights to use, reproduce, perform (publicly or otherwise), display (publicly or otherwise), modify, improve, create Derivative Works of, distribute, import, make, have made, sell and offer to sell the Background Technology, including all such modifications, improvements and Derivative Works thereof, solely as part of, or as necessary to use and exploit, the Work Product; and

(c) be freely assignable and sublicensable, in each case solely in connection with the assignment or licensing of the Work Product or any portion, modification, or Derivative Work thereof, and only to the extent necessary to allow the assignee or sublicensee, as the case may be, to use and exploit the Work Product or portion, modification, improvement, or Derivative Work thereof.

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

14.3 Approved Third-Party Materials.

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

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

(c) Contractor acknowledges that the State cannot indemnify any third parties, including but not limited to any third-party software providers that provide Third-Party Materials, 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.

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

15. Termination, Expiration, Transition. The State may terminate this Contract, the Maintenance and Support Services for all or any Software, or any Statement of Work, in accordance with the following:

15.1 Termination for Cause.

(a) The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (i) endangers the value, integrity, or security of any State system, data, 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 Contract. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

(b) If the State terminates this Contract under this **Section 15.1**, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of this Contract, the termination will be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in **Section 15.2**.

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

15.2 Termination for Convenience. The State may immediately terminate this Contract in whole or in part, without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance immediately, or (b) continue to perform in accordance with **Section 15.3**. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.

15.3 Transition Responsibilities. Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar

days, unless otherwise agreed to by the parties)(the "**Transition Period**"), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract to continue without interruption or adverse effect, and to facilitate the orderly transfer of the Services to the State or its designees. Such transition assistance may include but is not limited to: (a) continuing to perform the Services at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Services and Deliverables to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all State Materials and State Data; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed Deliverables prepared under this Contract as of the Contract termination or expiration date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, the "**Transition Responsibilities**"). This Contract is automatically extended through the end of the Transition Period.

15.4 Effect of Expiration or Termination.

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

(i) Contractor will be obligated to perform all Transition Responsibilities specified in **Section 15.3**.

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

(iii) Contractor will (A) return to the State all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the State's Confidential Information, (B) permanently erase the State's Confidential Information from its computer systems and (C) certify in writing to the State that it has complied with the requirements of this **Section 15.4(a)(iii)**, in each case to the extent such materials are not required by Contractor for Transition Responsibilities, if any.

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

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

16. Stop Work Order. The State may, at any time, order the Services of Contractor fully or partially stopped for its own convenience for up to ninety (90) calendar days at no additional cost to the State. The State will provide Contractor a written notice detailing such suspension (a "**Stop Work Order**"). Contractor must comply with the Stop Work Order upon receipt. Within 90 days,

or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate this Contract. The State will not pay for any Services, Contractor's lost profits, or any additional compensation during a stop work period.

17. Contractor Representations and Warranties.

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

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

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

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

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

17.2 Bid Response. Contractor represents and warrants to the State that:

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

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

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

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

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

(a) It will perform all Services in a professional and workmanlike manner in accordance with best industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications, and will devote adequate resources to meet its obligations under this Contract;

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

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

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

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

(f) The Software will not contain, or operate in such a way that it is compiled with or linked to, any Third-Party Materials other than Approved Third-Party Materials;

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

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

(i) No expiration or loss of any patent or application for patent rights in the Software is pending, or, to Contractor's knowledge after reasonable inquiry, threatened or reasonably foreseeable, and Contractor has no reason to believe that any claims of any such patent or patent application are or will be invalid, unenforceable, fail to issue, or be materially limited or restricted beyond the current claims, except for patent rights expiring at the end of their statutory term.

17.4 Performance Warranty and Limited Remedy.

(a) Contractor warrants that during the Warranty Period:

(i) all Software will be, and as installed in the Operating Environment (or any successor thereto) and used in accordance with the Documentation will

function in all respects, in conformity with this Contract and the Specifications and Documentation; and

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

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

18. Indemnification.

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

18.2 Indemnification Procedure. The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations. The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense, at its own cost and expense, if the State deems necessary. Contractor will not, without the State's prior written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. Any litigation activity on behalf of the State or any of its subdivisions, under this **Section 18**, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

18.3 Infringement Remedies.

(a) The remedies set forth in this **Section 18.3** are in addition to, and not in lieu of, all other remedies that may be available to the State under this Contract or otherwise, including the State's right to be indemnified for such actions.

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

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

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

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

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

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

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

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

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

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

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

19. Liquidated Damages.

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

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

(c) The assessment of liquidated damages will not constitute a waiver or release of any other remedy the State may have under this Contract for Contractor's breach of this Contract, including without limitation, the State's right to terminate this Contract for cause under **Section 15.1**, and the State will be entitled in its discretion to recover actual damages caused by Contractor's failure to perform its obligations under this Contract. However, the State will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages.

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

20. Damages Disclaimers and Limitations.

(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 CONTRACT 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 CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER

THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES SPECIFIED IN THE STATEMENT OF WORK.

21. State Data.

21.1 Ownership. The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes the State's data collected, used, processed, stored, or generated as the result of the Services, including but not limited to (a) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Services, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and, (b) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Services, which is defined under the Health Insurance Portability and Accountability Act ("**HIPAA**") and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This **Section 21.1** survives termination or expiration of this Contract.

21.2 Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Services. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This **Section 21.2** survives termination or expiration of this Contract.

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

21.4 Backup and Recovery of State Data. Unless otherwise specified in the Statement of Work, Contractor is responsible for maintaining a backup of State Data and providing for an orderly and timely recovery of such data. Unless otherwise described in the Statement of Work, Contractor must maintain a contemporaneous backup of State Data that can be recovered within two (2) hours at any point in time.

21.5 Loss of Data. In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twenty-four (24) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (g) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and (h) provide to the State a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. The State will have the option to review and approve any notification sent to affected individuals prior to its delivery. This **Section 21.5** survives termination or expiration of this Contract.

22. Confidential Information. Each party acknowledges that it may be exposed to or acquire communication or data of the other party that is confidential in nature and is not intended to be disclosed to third parties. This **Section 22** survives termination or expiration of this Contract.

22.1 Meaning of Confidential Information. The term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the

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

22.2 Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to the Contractor’s subcontractor is permissible where: (a) the subcontractor is a Permitted Subcontractor; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Permitted Subcontractor's responsibilities; and (c) Contractor obligates the Permitted Subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State’s request, any of the Contractor’s Representatives may be required to execute a separate agreement to be bound by the provisions of this **Section 22.2**.

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

22.4 Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.

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

23. Data Privacy and Information Security.

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

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

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

23.4 State's Right to Termination for Deficiencies. The State reserves the right, at its sole election, to immediately terminate this Contract or the Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this **Section 23**.

24. PCI Compliance. Undertaking by Contractor. Contractors that process, transmit, store or affect the security of credit/debit cardholder data, must adhere to the Payment Card Industry Data

Security Standard (PCI DSS). The Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist the State or for other uses specifically authorized by law.

24.1 Cooperation to Notify of Breach. The Contractor must notify the State's Contract Administrator, within 48 hours of discovery, of any breaches in security where cardholder data has been compromised. In that event, the Contractor must provide full cooperation to the card associations (e.g. Visa, MasterCard, and Discover) and state acquirer representative(s), or a PCI approved third party, to conduct a thorough security review. The review must validate compliance with the PCI Data Security Standard for protecting cardholder data. The Contractor must provide, at the request of the State, the results of such third party security review. At the State's sole discretion, the State may perform its own security review, either by itself or through a PCI approved third party.

24.2 Responsibilities for Costs Incurred. The Contractor is responsible for all costs incurred as the result of the breach. Costs may include, but are not limited to, fines/fees for non-compliance, card reissuance, credit monitoring, and any costs associated with a card association, PCI approved third party, or State initiated security review. Without limiting Contractor's obligations of indemnification as further described in this Contract, Contractor must indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the breach.

24.3 Disposing of Cardholder Data. The Contractor must dispose of cardholder data when it is no longer needed in compliance with PCI DSS policy. The Contractor must continue to treat cardholder data as confidential upon contract termination.

24.4 Audit by Contractor. The Contractor must provide the State's Contract Administrator with an annual Attestation of Compliance or a Report on Compliance showing the contractor is in compliance with the PCI Data Security Standard. The Contractor must notify the State's Contract Administrator of all failures to comply with the PCI Data Security Standard.

25. CEPAS Electronic Receipt Processing Standard.

Reserved.

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

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

26.2 Right of Inspection. Within ten (10) calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Services are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of this Contract must be paid or refunded within forty-five (45) calendar days.

26.3 Application. This **Section 25** applies to Contractor, any Affiliate, and any Permitted Subcontractor that performs Services in connection with this Contract.

27. Insurance Requirements.

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

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

Minimal Limits: $500,000 Each Accident $500,000 Each Employee by Disease $500,000 Aggregate Disease.	
Privacy and Security Liability (Cyber Liability) Insurance	
Minimal Limits: $1,000,000 Each Occurrence $1,000,000 Annual Aggregate	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.
Crime (Fidelity) Insurance	
Minimal Limits: $1,000,000 Employee Theft Per Loss	Contractor must have their policy: (1) cover forgery and alteration, theft of money and securities, robbery and safe burglary, computer fraud, funds transfer fraud, money order and counterfeit currency, and (2) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as Loss Payees.

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

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

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

28. Dispute Resolution.

28.1 Unless otherwise specified in the Statement of Work, the parties will endeavor to resolve any Contract dispute in accordance with **Section 28**. The initiating party will reduce its description of the dispute to writing (including all supporting documentation) and deliver it to the responding party's Project Manager. The responding party's Project Manager must respond in writing within five (5) Business Days. The initiating party has five (5) Business Days to review the response. If after such review resolution cannot be reached, both parties will have an additional five (5) Business Days to negotiate in good faith to resolve the dispute. If the dispute cannot be resolved within a total of fifteen (15) Business Days, the parties must submit the dispute to the parties' Contract Administrators. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

28.2 Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' Contract Administrators, and either Contract Administrator concludes that resolution is unlikely, or fails to respond within fifteen (15) Business Days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This **Section 28** does not limit the State's right to terminate this Contract.

29. Miscellaneous.

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

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

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

29.2 Conflicts and Ethics. Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This **Section 29.2** applies to Contractor, any Affiliate, and any Permitted Subcontractor that Performs Services in connection with this Contract.

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

29.4 Nondiscrimination. Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., Contractor and its Permitted Subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.

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

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

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

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

(a) acts of God;

(b) flood, fire or explosion;

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

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

(e) national or regional emergency; or

(f) any passage of law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition.

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

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

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

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

29.12 Notices. All notices, requests, consents, claims, demands, waivers and other communications under this Contract must be in writing and addressed to the parties as follows (or as otherwise specified by a party in a notice given in accordance with this **Section 29.12**):

If to Contractor:

Mothic LLC
341 James SE. #2
Grand Rapids, MI 49503

Email: tim@mothic.com

Attention: Timothy Shamilov, Project Manager

If to State:

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Notices sent in accordance with this **Section 29.12** will be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by email (with confirmation of transmission), if sent during normal business hours of the recipient, and on the next Business Day, if sent after normal business hours of the recipient; or (d) on the fifth (5th) calendar day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

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

29.14 Entire Contract. This Contract, together with all Schedules, Exhibits, and the Statement of Work constitutes the sole and entire agreement of the parties to this Contract with respect to the subject matter of this Contract and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect

to such subject matter. In the event of any inconsistency between the statements made in the body of this Contract, the Schedules, Exhibits, and the Statement of Work, the following order of precedence governs: (a) first, this Contract, excluding its Exhibits, Schedules, and the Statement of Work; (b) second, the Statement of Work as of the Effective Date; and (c) third, the Exhibits and Schedules to this Contract as of the Effective Date.

29.15 Assignment. Contractor may not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Contract, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the State's prior written consent. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Contractor (regardless of whether Contractor is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Contract for which the State's prior written consent is required. No delegation or other transfer will relieve Contractor of any of its obligations or performance under this Contract. Any purported assignment, delegation, or transfer in violation of this **Section 29.15** is void.

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

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

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

29.19 Equitable Relief. Each party acknowledges that a breach by a party of **Section 13** (Intellectual Property Rights; Ownership), **Section 21** (State Data), or **Section 22** (Confidential Information) may cause the non-breaching party immediate and irreparable harm, for which an

award of damages would not be adequate compensation. Each party agrees that, in the event of such breach or threatened breach, the non-breaching party will be entitled to equitable relief, including in the form of orders for preliminary or permanent injunction, specific performance, and any other relief that may be available from any court. Such remedies will not be deemed to be exclusive but will be in addition to all other remedies available under this Contract, at law or in equity, subject to any express exclusions or limitations in this Contract to the contrary.

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

Mobile Application Development Prequalification

Schedule A

STATEMENT OF WORK (SOW)

1.000 Project Identification

1.001 Project Request

This Contract is for pre-qualification of the Contractor for the creation of Mobile applications for the State of Michigan. These Contracts were established with vendors pre-qualified through a competitive solicitation process. Each mobile application request will be competitively bid from the pool of Contracted pre-qualified candidates. This Schedule identifies the Contract requirements.

The following Contractors have been pre-qualified for this program:

1. Accenture - Southfield, MI
2. Deloitte Consulting LLP; Detroit, MI
3. Gravity Works - Lansing, MI
4. HTC Global Services - Troy, MI
5. IBM - Lansing, MI
6. Lochbridge - Lansing, MI
7. Magenic Technologies Inc - St Louis Park, MN
8. Mothic - Grand Rapids, MI
9. V 2 Soft - Bloomfield Hills, MI
10. 906 Technologies - Marquette, MI
11. Open Systems Technology (OST) - Grand Rapids, MI

1.002 Background

This is a Contract for a pre-qualified program providing application development services for Resident Mobile Applications (RMA) and mobile friendly web applications for the State of Michigan. Contractors must submit written proposals according to the instructions contained within this document, discussing how they will meet the specific requirements.

The State has awarded multiple contracts to service providers who are able to provide services specified in this Contract. Service providers awarded contracts will be eligible to bid on Statements of Work (SOW) issued by the Department of Technology, Management & Budget (DTMB) Mobile Center of Excellence (MCOE). Contractors selected will be issued purchase orders for which the terms will be governed by this Contract and the SOW.

The State of Michigan has adopted a “mobile first”, customer-centric strategy for public facing applications acquired or created by or for State agencies. To that end, the MCOE has been established by the DTMB to serve as the steward and validator of standards for technology tools, security, user experience, branding, testing, and deployment of mobile application acquired or created by or for State agencies.

Over the next four years, the State aims to double the number of online services to 500 while ensuring that all public facing applications are mobile friendly. Meeting this goal will require significantly more resources than those currently dedicated to mobile application development. As such, the MCOE will require assistance from external service providers with experience and skills in the development of Resident Mobile Applications (RMA) and mobile friendly web applications.

The State's objectives for the pool of prequalified mobile application development Contractors include:

- Ability to rapidly develop and implement RMA and mobile friendly mobile applications using State of Michigan approved technologies
- Consistent contract terms
- Consistent selection criteria and screening process
- Single point of contact for prequalified Contractors
- Consistent billing practices

Efficient and timely process to post SOWs, review Pre-qualified Contractor proposals, and award/issue Purchase Orders (PO)

1.100 Scope of Work and Deliverables

1.101 In Scope

Rapidly develop and implement RMA and mobile friendly mobile applications using State of Michigan approved technologies.

Each development project may consist of the following scope:

- Project Management
  - Project Planning
  - Project Tracking
  - Reporting
  - Facilitated Sessions
  - Validation and Verification
- Integration of Third Party Software
- Application Design
- Application Development
- Implementation
  - Data Conversion
  - Data Migration
  - Configuration
  - Customization
  - Interfaces/Integration
  - Testing
- Training
  - End user – in person or on the web
- Documentation
- Maintenance and Support
  - Help Desk
  - Onsite Technical Support
- Knowledge Transfer/Transition

- Other
  - Reserve bank of hours for future enhancements and/or legislative mandates

A more detailed description of the software, services (work) and deliverables sought for this Contract is provided in Article 1, Section 1.104, Work and Deliverables.

1.102 Out Of Scope

WILL BE IDENTIFIED IN SPECIFIC SOWS.

1.103 Environment

The links below provide information on the State's Enterprise Information Technology (IT) policies, standards and procedures which includes security policy and procedures, eMichigan web development, and the State Unified Information Technology Environment (SUITE).

Contractors are advised that the State has methods, policies, standards and procedures that have been developed over the years. Contractors are expected to provide proposals that conform to State IT policies and standards. All services and products provided as a result of this Contract must comply with all applicable State IT policies and standards. Contractor is required to review all applicable links provided below and state compliance in their response.

Enterprise IT Policies, Standards and Procedures:
http://michigan.gov/dtmb/0,4568,7-150-56355_56579_56755---,00.html

All software and hardware items provided by the Contractor must run on and be compatible with the MDTMB Standard Information Technology Environment. Additionally, the State must be able to maintain software and other items produced as the result of the Contract. Therefore, non-standard development tools may not be used unless approved by MDTMB. The Contractor must request, in writing, approval to use non-standard software development tools, providing justification for the requested change and all costs associated with any change. The Mobile Center of Excellence must approve any tools, in writing, before use on any information technology project.

It is recognized that technology changes rapidly. The Contractor may request, in writing, a change in the standard environment, providing justification for the requested change and all costs associated with any change. The Mobile Center of Excellence must approve any changes, in writing, before work based on the changed environment may proceed.

Enterprise IT Security Policy and Procedures:

http://www.michigan.gov/documents/dmb/1210.32.pdf

http://www.michigan.gov/documents/dmb/1325_193160_7.pdf

http://www.michigan.gov/documents/dmb/1335_193161_7.pdf

http://www.michigan.gov/documents/dmb/1340_193162_7.pdf

The State's security environment includes:

- MDTMB Single Login.
- MDTMB provided SQL security database.
- Secured Socket Layers.
- SecureID (State Security Standard for external network access and high risk Web systems)

MDTMB requires that its single - login security environment be used for all new client-server software development. Where software is being converted from an existing package, or a client-server application is being purchased, the security mechanism must be approved in writing by the State's Project Manager and MDTMB Office of Enterprise Security.

Any additional Agency specific security requirements above and beyond the enterprise requirements and standard terms and conditions stated in Article 2 will be provided as part of the Agency Specific SOW's.

ADA Compliance
Contractor shall comply with and adhere to the Accessibility Standards of Section 508 of the Rehabilitation Act of 1973, including any more specific requirements set forth in an applicable Statement of Work. See DTMB Policy at http://www.michigan.gov/documents/dmb/1650.00_209567_7.pdf?20151026134621."

State of Michigan Look and Feel Standard
All software items provided by the Contractor must be complaint with and adhere to the State of Michigan Look and Feel Standards www.michigan.gov/somlookandfeelstandards.

The State Unified Information Technology Environment (SUITE):
Includes standards for project management, systems engineering, and associated forms and templates – must be followed: http://www.michigan.gov/suite

Agency Specific Technical Environment
As this is a pre-qualification program. Agency specific environments will vary. At the point of a new application request, any environment details which are necessary beyond the standards listed above, including provisions around look, feel, ADA and technology stack, will be identified in the SOW.

1.104 Work And Deliverables

I. Services and Deliverables To Be Provided

Contractor must provide specified deliverables and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth in the SOW, including but not limited to those items listed below:

A. Project Management
Provide services as required by SOW issued by the MCOE. Each SOW will contain unique specifications and deliverables, as well as standard specifications such as, but not limited to:

1. Project management services, in adherence with State standards, including, but not limited to, planning, scheduling and documentation for the design and development of RMA or mobile friendly web application.
2. Adhere to DTMB standards for project management.

Deliverable(s)
- Documentation in accordance with the State of Michigan SUITE such as but not limited to:
  - Project Charter
  - Project Plan
  - Requirements
  - Status Reports

Acceptance Criteria
- Documentation adheres to DTMB standards for project management.
- Specific acceptance criteria to be outlined in each SOW.

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501. Any additional or more specific criteria will be identified in the SOW.

B. Application Design
Requirements gathering sessions by phone or live meeting, to confirm specific functionality required in application to determine final design plans.

1. User interface design for RMA or mobile friendly web application.
2. Functional design for RMA or mobile friendly web application.

Deliverable(s)

- Application design document.
- Prototypes, wire frames, or mock-ups.
- Additional deliverables to be defined in the Statement of Work.
- Statement of acknowledgement of ADA requirements.

Acceptance Criteria

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.

- Specific acceptance criteria to be outlined in each SOW
- Application design adheres to the State of Michigan Look and Feel Standards
- Review and verification of compliance with the Section 508 of the Rehabilitation Act (29 U.S.C. 794d) as amended by the Workforce Investment Act of 1998, specifically Web Content Accessibility Guidelines (WCAG) 2.0AA.

C. Application Development

Contractor must utilize State technology stack to complete development.

1. Development for RMA or mobile friendly web application
2. Develop and implement web services or other data access tools necessary to accurately, efficiently, and securely access and/or update approved State agency data.
3. Unit, integration, and usability testing for RMA or mobile friendly web application.
4. All source code must be provided to the State and will be owned by the State for modification, enhancement, and maintenance.

Deliverable(s)

- Documented source code.
- Additional deliverables to be defined in the Statement of Work.
- Complete self-assessment for ADA compliance.

Acceptance Criteria

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.

- Review and verification of compliance with the Section 508 of the Rehabilitation Act (29 U.S.C. 794d) as amended by the Workforce Investment Act of 1998, specifically Web Content Accessibility Guidelines (WCAG) 2.0AA. WCAG.
- Delivery of working source code
- Verification of all IT tools necessary for production implementation and support of RMA or mobile friendly web applications are listed on the attached Enterprise Architecture Solution Assessment or approved through the MCOE.
- Verification of adherence to DTMB standards for technology tools, security, user experience, branding, testing, and deployment of RMA and mobile friendly web applications.
- Specific acceptance criteria to be outlined in each SOW.

D. Implementation

1. Unless otherwise stated in the SOW, all applications will be hosted and maintained by the State. Downloadable mobile applications must be deployed by the State's MCOE, through the State's enterprise accounts.

2. Contractor must provide appropriate system interfaces/integration as defined in the Statement of Work:
    a. The State of Michigan must provide the name of the application(s) that the subject application must interface with, and information that will allow a bidder to provide an accurate price for the work requested, such as protocols, platform.

Deliverable(s)

- Plans must include:
    - Implementation Plan, including conversion, migration, configuration, customization and integration.
    - Test Plans and Scripts
    - Software configuration management plan
- Services to implement the application, must include:
    - Data conversion
    - Data migration (may include transition of business operations to the new application)
    - Configuration
    - Customization
    - Interfaces/Integration
    - Additional deliverables to be defined in the Statement of Work
    - Testing, including UAT

Acceptance Criteria

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.

- Specific acceptance criteria to be outlined in each SOW
- Successful completion of user acceptance testing as determined by State of Michigan

E. Training

Training requirements for each project will be defined within the SOW. All training manuals, training plans and other documentation provided become the property of the State.

F. Process for individual projects awarded against pre-qualified Contracts:

1. MCOE will issue each SOW to all pre-qualified Contractors on Buy4Mchigan.com. The SOW will identify the deliverables, period of performance, specific response information required, work evaluation and payment criteria, and any additional terms and conditions that may apply. The process for the State issuing and Contractor(s) responding to an SOW is as follows:

    a. The State will issue a SOW to all pre-qualified Contractors with a timeline including due dates for questions, due dates for responses, and period of performance.

    b. Contractor responses must follow criteria required in each SOW. Contractor pricing must not exceed rates provided in Exhibit C.

    c. The State's selection will be based on a best value evaluation using the criteria identified in the SOW. Other selection criteria or tools which may be in the best interest of the State may be utilized to make a selection.

H. Documentation

The documentation of components, features, and use of the hardware/software shall be detailed such that resolution of most problems can be determined from the documentation, and most questions can be answered.

Deliverable(s)

- Enterprise Architecture Solution Assessment and Security Review (DIT 170) documents
- Technical documentation for RMA or mobile friendly web application.
- Documentation and support necessary for the successful submission of RMA to Apple Store and Google Play.
- Data Element Dictionary
    - The Contractor must notify the State of any discrepancies or errors outlined in the system, operations, and user documentation.

Acceptance Criteria

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.

- All system, operational, user, change, and issue documentation must be available in electronic format, published to an intranet website, accessible to State users, updated regularly, with unique numerical identifiers for each section and be consistent with the most current version of the application(s) and three (3) previous versions.
- All system, operations, user, change and issue documentation is to be organized in a format, which is approved by the State and facilitates updating and allows for revisions to the documentation to be clearly identified including the three (3) previous versions.
- The Contractor must develop and submit for State approval complete, accurate, and timely system, operations, and user documentation.
- Specific acceptance criteria to be outlined in each SOW

I. Operation Services

Reserved.

J. Maintenance and Support

There may be applications that require third party maintenance. In the event the State is not able to maintain the application in house, the requirements for this maintenance will be identified within each specific SOW.

Additional Requirements to be defined in each SOW.

K. Knowledge Transfer/Transition

1. Support and training for transition of production support for RMA or mobile friendly web application to State resources.
2. Technical documentation for State individuals who will be working with the services contractor to configure the applications including establishing databases and interfaces, data conversion, customization, and upgrading the customized software.
3. System administration training for State personnel who will be responsible for ongoing maintenance and administration of the system, including security
4. Contractor to provide 60 days of post implementation support to include issue identification, troubleshooting and resolution.

Deliverable(s)

- Support, training and transition materials to State Staff.

Acceptance Criteria

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.

- Specific acceptance criteria to be outlined in each SOW

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II. Requirements

Requirements for all future projects will be included in the SOW for the particular project.

A. Technical/General System Requirements

1. Technical/general system requirements will identify what the solution or product must run on or integrate with, including any standards that must be met, security requirements, service levels and interfaces.
2. Technical/general system requirements will also identify the general framework in which the system or product must work, such as: capacity requirements (number of users, concurrent users, number of transactions to be handled, peak usage), documentation, audit and backup and recovery.

B. Functional Requirements

Functional requirements identify what the product or system must do to enable performance of work tasks and any applicable service levels. Functional requirements will be provided with each SOW.

1.200 Roles and Responsibilities

1.201 Contractor Staff, Roles, And Responsibilities

A. Contractor Staff

The Contractor will provide resumes in Personnel Resume templates provided with each SOW bid through this program, listing qualifications and experience of each proposed staff member including subcontractors, who will be assigned to the project, indicating the duties/responsibilities and qualifications of such personnel, and stating the amount of time each will be assigned to the project. The competence of the personnel the Contractor proposes for the project will be measured by the candidate's education and experience with particular reference to experience on similar projects as described in the Statement of Work. The Contractor will commit the staff identified in its proposal to actually perform the assigned work.

Contractor must provide a list of all subcontractors, including firm name, address, contact person, and a complete description of the work to be contracted. Include descriptive information concerning subcontractor's organization and abilities.

The Contractor will identify a 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.

All Key Personnel may be subject to the State's interview and approval process. Any key staff substitution must have the prior approval of the State. The State has identified the following as key personnel for this project:

- **Project Manager**
- **Developer**
- **Front-End UI Developer**
- **Application Architect**
- **Graphic Designer**

The Contractor will provide a (*project manager/technical lead*) to interact with the designated personnel from the State to insure a smooth transition to the new system. The project manager/technical lead will

coordinate all of the activities of the Contractor personnel assigned to the project and create all reports required by State. The Contractor's project manager/technical lead 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

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

For any project SOW bid through this pre-qual program the contractor will also submit the following:

The contractor must submit a letter of commitment for Key Personnel, signed by the identified resource, stating their commitment to work for the contractor/subcontractor on this project contingent on award of the bid. If the identified personnel are currently assigned to a State project the contractor must provide a letter signed by the State Project Manager releasing the individual from the project upon execution of the contract.

The Contractor will provide, and update when changed, an organizational chart indicating lines of authority for personnel involved in performance of this Contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management and indicate who within the firm will have prime responsibility and final authority for the work.

B. Work Requirements

1. Location of Work

Most development work will be completed offsite.

2. State Hours of Operation:

a. Normal State working hours are 8:00 a.m. to 5:00 p.m. EST, Monday through Friday, with work performed as necessary after those hours to meet project deadlines. No overtime will be authorized or paid.
b. The State is not obligated to provide State management of assigned work outside of normal State working hours. The State reserves the right to modify the work hours in the best interest of the project.
c. Contractor shall observe the same standard holidays as State employees. The State does not compensate for holiday pay.

3. Travel:

a. No travel or expenses will be reimbursed. This includes travel costs related to training provided to the State by Contractor.
b. Travel time will not be reimbursed.

4. Additional Security and Background Check Requirements:

a. Contractor must present certifications evidencing satisfactory Michigan State Police Background checks ICHAT and drug tests for all staff identified for assignment to this project.

b. In addition, proposed Contractor personnel will be required to complete and submit an RI-8 Fingerprint Card for the National Crime Information Center (NCIC) Finger Prints, if required by project.

c. Contractor will pay for all costs associated with ensuring their staff meets all requirements.

Contractor must complete Personnel Resume Templates if included in the SOW.

1.202 State Staff, Roles, And Responsibilities

If the Contractor is working onsite, the State will provide the following resources for the Contractor's use on this project:

- Work space
- Minimal clerical support
- Desk
- Telephone
- Access to Printer
- Access to copiers and fax machine

The State project team may consist of Subject Matter Experts (SME's), project support, and a MDTMB and Agency project manager:

A. Subject Matter Experts

The Subject Matter Experts representing the business units involved will provide the vision for the business design and how the application shall provide for that vision. They shall be available on an as needed basis. The SME's will be empowered to:

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

B. State Project Manager- (MDTMB and Agency)

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

When assigned, the State's Project Manager will provide the following services:

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

Name	Agency/Division	Title
	DTMB - IT	Project Manager

TBD	TBD (Agency)	Project Manager

C. **Mobile Pre-Qualification Program Manager (DTMB MCOE)**

DTMB will provide a Program Manager whose duties shall include supporting the management of the Contract. The Program Manager will perform a post project review of services delivered by the Contractor. This assessment will be documented in a Contract Compliance Report rating Contractor compliance to key deliverables including, but not limited to:

1. Quality of deliverables (met specifications)
2. Timeliness of deliverables (on schedule)
3. Accuracy of deliverables
4. Knowledge of Contractor staff
5. Timeliness and accuracy of invoices
6. Helpfulness, promptness and courtesy of Contractor support staff
7. Cost control of project by Contractor
8. Timeliness of required reports
9. Negative reviews may result in Contractor being removed from the pre-qualified program for a minimum of one year. Contractor may submit a proposal when Contract is re-issued to be added to the pre-qualified program again.
10. After each year of the Contract, the State will evaluate the pre-qualification program. If the Contractor did not bid on at least one SOW, the Contractor may be removed from the pre-qualified program. To be re-added, the Contractor must submit a proposal when the Contract is re-issued.
11. As part of the annual evaluation of the pre-qualification program, the State may opt to re-issue this Contract to increase the number and variety of pre-qualified contractors.

Name	Agency/Division	Title
	MDTMB	Program Manager

1.203 Other Roles And Responsibilities

A. DTMB MCOE Subject Matter Experts

Subject Matter Experts representing the MCOE may provide oversight and/or validation of application design and /or development to ensure compliance with State of Michigan standards.

When assigned, the MCOE SME's may provide the following:

1. Review of application for compliance with the Section 508 of the Rehabilitation Act (29 U.S.C. 794d) as amended by the Workforce Investment Act of 1998, specifically Web Content Accessibility Guidelines (WCAG) 2.0AA. WCAG.
2. Review of application for compliance with State of Michigan look and feel standards.
3. Review of technology stack to validate compliance with State of Michigan standards.
4. Review of architecture to validate compliance with State of Michigan security standards.
5. Review of technical documentation.
6. Submission of RMA to Apple Store and Google Play.

B. DTMB Customer Service (CS) Support Team

When assigned, DTMB CS Support Team members may provide the following:

1. Validation of application architecture as related to accessing Agency specific data housed and/or maintained by the State.
2. Access to necessary data for use in application development and deployment as deemed necessary and appropriate by the Agency and by Michigan Cyber Security (MCS).
3. Assistance in application implementation as needed for hosting within or integration with the State of Michigan's IT infrastructure.
4. Post-implementation operational support of application after successful knowledge transfer from the Contractor.

(a) 1.300 Project Plan

1.301 Project Plan Management

A. Preliminary Project Plan

Contractor will provide a Preliminary Project Plan with the proposal for individual SOW's for evaluation purposes, including necessary time frames and deliverables for the various stages of the project and the responsibilities and obligations of both the Contractor and the State.

1. In particular, the Preliminary Project Plan will include a MS Project plan or equivalent (check the SUITE/PMM standard):
    a. A description of the deliverables to be provided under this contract.
    b. Target dates and critical paths for the deliverables.
    c. Identification of roles and responsibilities, including the organization responsible. Contractor is to provide a roles and responsibility matrix.
    d. The labor, hardware, materials and supplies required to be provided by the State in meeting the target dates established in the Preliminary Project Plan.
    e. Internal milestones
    f. Task durations
2. The Preliminary Project Plan shall include the following deliverable/milestones for which payment shall be made.
    a. Payment to the Contractor will be made upon the completion and acceptance of the deliverable or milestone, not to exceed contractual costs of the phase. A milestone is defined as complete when all of the deliverables within the milestone have been completed.
    b. Failure to provide deliverable/milestone by the identified date may be subject to liquidated damages as identified in Article 2.

Note: A Final Project Plan will be required as stated in Schedule A, Section 1.301 (C) Project Control.

B. Performance Review Meetings

The State will schedule performance meetings as required to review the Contractor's performance under the Contract. The meetings will be held in Lansing, Michigan, or by teleconference, as mutually agreed by the State and the Contractor. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

C. Project Control

1. The Contractor will carry out this project under the direction and control of MDTMB, MCOE and specific agency as identified in the SOW.
2. Within 5 working days of the execution of a Purchase Order (PO), the Contractor will submit to the State project manager(s) for final approval of the project plan. This project plan must be in agreement with Article 1, Section 1.104 Work and Deliverables, and must include the following:

a. The Contractor's project organizational structure.
b. The Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.
c. The project work breakdown structure (WBS) showing sub-projects, activities and tasks, and resources required and allocated to each.
d. The time-phased plan in the form of a graphic display, showing each event, task, and decision point in the WBS.

3. The Contractor will manage the project in accordance with the State Unified Information Technology Environment (SUITE) methodology, which includes standards for project management, systems engineering, and associated forms and templates which is available at http://www.michigan.gov/suite
   a. Contractor will use an automated tool for planning, monitoring, and tracking the Contract's progress and the level of effort of any Contractor personnel spent performing Services under the Contract. The tool shall have the capability to produce:
      - Staffing tables with names of personnel assigned to Contract tasks.
      - Project plans showing tasks, subtasks, deliverables, and the resources required and allocated to each (including detailed plans for all Services to be performed within the next 14 calendar days, updated semi-monthly).
      - Updates must include actual time spent on each task and a revised estimate to complete.
      - Graphs showing critical events, dependencies and decision points during the course of the Contract.
   b. Any tool(s) used by Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State standards.

1.302 Reports

Reporting formats must be submitted to the State's Project Manager for approval within 10 business days after the execution of this Contract. Once both parties have agreed to the format of the report, it shall become the standard to follow for the duration of the contract.

Reporting cycle to be agreed upon by the State's Project Manager and the Contractor and will be reflective of the Software Development Methodology used. At a minimum, reports must be provided on a monthly basis.

At a minimum, reports must include:

- Summary of activity during the report period
- Accomplishments during the report period
- Deliverable status
- Schedule status
- Action Item status
- Issues/Risks
- Change Control
- Repair status
- Maintenance Activity

1.400 Project Management

1.401 Issue Management

An issue is an identified event that if not addressed may affect schedule, scope, quality, or budget.

The Contractor shall maintain an issue log for issues relating to the provision of services under this Contract. The issue management log must be communicated to the State's Project Manager on an agreed upon schedule, with email notifications and updates. The issue log must be updated and must contain the following minimum elements:

- Description of issue
- Issue identification date
- Responsibility for resolving issue.
- Priority for issue resolution (to be mutually agreed upon by the State and the Contractor)
- Resources assigned responsibility for resolution
- Resolution date
- Resolution description

Issues shall be escalated for resolution from level 1 through level 3, as defined below:

Level 1 – Business leads
Level 2 – Project Managers
Level 3 – Subject Matter Experts (SME's)

1.402 Risk Management

A risk is an unknown circumstance or event that, if it occurs, may have a positive or negative impact on the project.

The Contractor is responsible for establishing a risk management plan and process, including the identification and recording of risk items, prioritization of risks, definition of mitigation strategies, monitoring of risk items, and periodic risk assessment reviews with the State.

A risk management plan format shall be submitted to the State for approval within twenty (20) business days after the effective date of the contract resulting from the upcoming Contract. The risk management plan will be developed during the initial planning phase of the project, and be in accordance with the State's PMM methodology. Once both parties have agreed to the format of the plan, it shall become the standard to follow for the duration of the contract. The plan must be updated bi-weekly, or as agreed upon.

The Contractor shall provide the tool to track risks. The Contractor will work with the State and allow input into the prioritization of risks.

The Contractor is responsible for identification of risks for each phase of the project. Mitigating and/or eliminating assigned risks will be the responsibility of the Contractor. The State will assume the same responsibility for risks assigned to them.

1.403 Change Management

Project 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.

Contract Change Management
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 while the migration is underway.

The Contractor will employ the change control methodologies to justify changes in the processing environment, and to ensure those changes will not adversely affect performance or availability.

1.500 Acceptance

1.501 Criteria

Acceptance for each application must include the following:

- Application must perform the required functions correctly.
- Application must be intuitive and easily utilized without extensive training.
- Application must meet all DTMB standards for technology, look and feel, ADA, and usability.
- Application must be simple to maintain.

Acceptance/sign-off process:

- Testing and assessment of acceptability will be completed by a review team consisting of, staff from DTMB eMichigan and client agency.

1.600 Compensation and Payment

1.601 Compensation And Payment

Pricing shall be firm fixed by deliverable upon implementation, testing and sign-off by the SOM.

A. Method of Payment

The project will be paid against a Purchase Order released from the awarded Contract via Electronic Funds Transfer (EFT). The Costs Table(s) attached must be used as the format for submitting pricing information.

Cost Table attached as Schedule B.

The selected Contractor will be required to submit an Administrative Fee (see Section 2.031) on all payments remitted under the Contract. The Contractor should consider Administrative Fee requirements when developing its price proposal.

Extended purchasing program volume requirements are not included, unless stated otherwise.

B. Travel

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

C. Statements of Work and Issuance of Purchase Orders

1. Unless otherwise agreed by the parties, each Statement of Work will include:
    a. Background
    b. Project Objective
    c. Scope of Work
    d. Deliverables
    e. Acceptance Criteria
    f. Project Control and Reports
    g. Specific Department Standards
    h. Payment Schedule
    i. Travel and Expenses
    j. Project Contacts
    k. Agency Responsibilities and Assumptions
    l. Location of Where the Work is to be performed
    m. Expected Contractor Work Hours and Conditions

2. The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) 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 Statement of Work 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.

D. Invoicing

1. 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

2. Invoices must provide and itemize, as applicable:
   a. Contract number;
   b. Purchase Order number
   c. Contractor name, address, phone number, and Federal Tax Identification Number;
   d. Description of any commodities/hardware, including quantity ordered;
   e. Date(s) of delivery and/or date(s) of installation and set up;
   f. Price for each item, or Contractor's list price for each item and applicable discounts;
   g. Maintenance charges;
   h. Net invoice price for each item;
   i. Shipping costs;
   j. Other applicable charges;
   k. Total invoice price; and
   l. Payment terms, including any available prompt payment discount.

The State may pay maintenance and support charges on a monthly basis, in arrears. Payment of maintenance service/support of less than one (1) month's duration shall be prorated at 1/30th of the basic monthly maintenance charges for each calendar day.

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 percent (5%) of total amounts invoiced by Contractor for each PO for Services/Deliverables. The amounts held back shall be released to Contractor after the State has granted Final Acceptance.

Schedule B – Pricing

Time and Materials (T&M) Labor Rate Tables

Please see MI01 MI Memories Resource List.html

Roles and/or Materials for Future Enhancements, Configuration and/or Customization	Unit cost ($)
Project managers	110
Business analysts	
System analysts	
Programmer/developers	120
System administrators	
Database administrators	
Q/A Manager	
Security specialist	
Testers	
Technical writers	
CM specialists	
System Architects	130
Network engineer/administrator	
Software Architects	130
Project assistants	
Web developers	
Application trainers	
Designer	120