



STATE OF MICHIGAN PROCUREMENT
Department of Technology Management and Budget
525 W Allegan Street, Lansing, MI 48913
PO BOX 30026 Lansing, MI 48909

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **210000000953**

between

THE STATE OF MICHIGAN

and

Güd Marketing Inc.
1223 Turner St., Ste. 100
Lansing, MI 48906
Primary: Zach Krieger
Alternate: Debbie Horak
Zach: C:989-598-5941 O:517-853-3873
Debbie: O: 571-853-3870
Zach: krieger@gudmarketing.com
Debbie: gudbusiness@gudmarketing.com
CV0036125

STATE	Program Manager	Sarah Walter	DTMB
		517-256-4237	
		Walters6@michigan.gov	
	Contract Administrator	Sarah Walter	SW
		517-256-4237	
		walters6@michigan.gov	

CONTRACT SUMMARY

Statewide Marketing & Advertising Services

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
October 1, 2021	September 30, 2024	2, 1-year	N/A
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
☐ P-card ☐ Payment Request (PRC) ☐ Other			☒ Yes ☐ No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
THIS IS NOT AN ORDER. This Contract Agreement is awarded on the basis of RFP NO 210000001333. Orders for delivery will be issued directly by Departments through the issuance of a Delivery Order Form.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION		\$3,000,000.00	

FOR THE CONTRACTOR:

Gud Marketing, Inc.

Company Name

Authorized Agent Signature

Debbie Horak

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Sarah Walter, Category Analyst

Name & Title

DTMB Central Procurement Services

Agency

Date

STANDARD CONTRACT TERMS AND CONDITIONS

These Terms and Conditions, together with all Schedules (including Schedule A and all other Statement(s) of Work), Exhibits and any other applicable attachments or addenda incorporated herein (collectively this “**Contract**”) are agreed to between the State of Michigan (the “**State**”) and Gud Marketing, Inc. (“**Contractor**”), a Michigan Corporation. This Contract is effective on October 1, 2021 (“**Effective Date**”), and unless terminated, expires on September 30, 2024.

The Contract may be renewed for up to 2, 1-year options. Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.

The parties agree as follows:

- 1. Duties of Contractor.** Contractor must perform the services and provide the deliverables described in Statement(s) of Work entered into under this Contract (the “**Contract Activities**”). “**Statement of Work**” means any statement of work entered into by the parties and incorporated into this Contract. The initial Statement of Work is attached as **Schedule A**. The terms and conditions of this Contract and Schedule A will apply at all times to any Statement of Work. An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in the applicable Statement of Work.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State's operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State's quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

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2. **Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Contractor:
Sarah Walter 525 W. Allegan Street Lansing, MI 48913 Walters6@michigan.gov 517-256-4237	Zach Krieger 1223 Turner Street, Ste 100 Lansing, MI 48906 krieger@gudmarketing.com Office: 517-853-3873 Mobile: 989-598-5941

3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a “**Contract Administrator**”):

State:	Contractor:
Sarah Walter 525 W. Allegan Street Lansing, MI 48913 Walters6@michigan.gov 517-256-4237	Debbie Horak 1223 Turner Street, Ste 100 Lansing, MI 48906 horak@gudmarketing.com 517-853-3870

4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a “**Program Manager**”):

State:	Contractor:
Sarah Walter 525 W. Allegan Street Lansing, MI 48913 Walters6@michigan.gov 517-256-4237	Molly Tipton 1223 Turner Street, Suite 101 Lansing, MI 48906 Tipton@gudmarketing.com 517-318-6343

5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Schedule A – Statement of Work) if, in the opinion of the State, it will ensure performance of the Contract.
6. **Insurance Requirements.** Contractor, at its sole expense, must maintain the insurance coverage identified below. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A-" or better, and a financial size of VII or better.

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Required Limits	Additional Requirements
Commercial General Liability Insurance	
Minimum Limits: \$1,000,000 Each Occurrence \$1,000,000 Personal & Advertising Injury \$2,000,000 Products/Completed Operations \$2,000,000 General Aggregate 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 04.
Automobile Liability Insurance	
Minimum Limits: \$1,000,000 Per Accident	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	
Minimum Limits: Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimum Limits: \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease	

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 Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract Effective Date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or delivery order number, at Contract formation and within twenty (20) calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 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.

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

- 7. Administrative Fee and Reporting.** Contractor must pay an administrative fee of 1% on all payments made to Contractor under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions), MiDEAL members, and other states (including governmental subdivisions and authorized entities). Administrative fee payments must be made online by check or credit card at: <https://www.thepayplace.com/mi/dtmb/adminfee>

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

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

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

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

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

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

- 9. Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.

Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in the Contract Activities and all associated intellectual property rights, if any. Such Contract Activities are works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Contract Activities and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Contract Activities, including all intellectual property rights therein.

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- 10. Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.
- 11. Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
- 12. Background Checks.** Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and Subcontractor employees, who may have access to any database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or Subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018. Upon request, or as may be specified in the Statement of Work, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.
- 13. Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.
- 14. Change of Control.** Contractor will notify within 30 days of any public announcement or otherwise once legally permitted to do so, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

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- 15. Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Schedule A.
- 16. Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in the Statement of Work. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 23, Termination for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

17. Reserved.

18. Reserved.

19. Reserved.

- 20. Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in the Statement of Work or the Pricing Schedule. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. All prices are exclusive 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.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment

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under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/SIGMAVSS> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

- 21. Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in the Statement of Work. 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 23** 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.
- 22. Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or delivery order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
- 23. Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, 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 the 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 24, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities 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,

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court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

- 24. 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 of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition Responsibilities. 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.
- 25. 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 4 months), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, 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 materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (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 date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.
- 26. 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; (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); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

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

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ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, 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.

27. **Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.
28. **Limitation of Liability and Disclaimer of Damages.** **IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
29. **Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
30. **Reserved.**
31. **State Data.**
 - a. **Ownership.** The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) the State's data collected, used,

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processed, stored, or generated as the result of the Contract Activities; (b) personally identifiable information (“PII”) collected, used, processed, stored, or generated as the result of the Contract Activities, including, without limitation, any information that identifies an individual, such as an individual’s social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother’s maiden name, email address, credit card information, or an individual’s name in combination with any other of the elements here listed; and, (c) personal health information (“PHI”) collected, used, processed, stored, or generated as the result of the Contract Activities, 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 survives the termination of this Contract.

- b. Contractor Use of State Data.** Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. 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 Contract Activities, 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 survives the termination of this Contract.
- c. Extraction of State Data.** Contractor must, within five (5) 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 the State Data in the format specified by the State.
- d. Backup and Recovery of State Data.** Unless otherwise specified in Schedule A, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Schedule A, Contractor must maintain a contemporaneous backup of State Data that can be recovered within two (2) hours at any point in time.
- e. Loss or Compromise of Data.** In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required

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by the State; (c) in the case of PII or PHI, at the State's sole election, (i) with approval and assistance from the State, notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twenty-four (24) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) pay for any costs associated with the occurrence, including but not limited to any costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution; (g) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (h) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and (i) provide to the State a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, not be tangentially used for any solicitation purposes, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. The State will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification to any other party, including but not limited to public media outlets, must be reviewed and approved by the State in writing prior to its dissemination. The parties agree that any damages relating to a breach of this **Section 31** are to be considered direct damages and not consequential damages. This section survives termination or expiration of this Contract.

32. Non-Disclosure of Confidential Information. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.

a. Meaning of Confidential Information. For the purposes of this Contract, 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

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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: (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). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

- b. 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 a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- c. 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 and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. 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.

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- e. 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) Business Days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control. Upon confirmation from the State, of receipt of all data, Contractor must permanently sanitize or destroy the State's Confidential Information, including State Data, from all media including backups, using National Security Agency ("NSA") and/or National Institute of Standards and Technology ("NIST") (NIST Guide for Media Sanitization 800-88) data sanitation methods or as otherwise instructed by the State. If the State determines that the return of any Confidential Information is not feasible or necessary, Contractor must destroy the Confidential Information as specified above. The Contractor must certify the destruction of Confidential Information (including State Data) in writing within five (5) Business Days from the date of confirmation from the State.
- 33. Data Privacy and Information Security.** Throughout the Term and at all times in connection with its actual or required performance of the Services, Contractor will maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State's Confidential Information that comply with the requirements of the State's data security policies as set forth in **Schedule D – Data Security Schedule** to this Contract.
- 34. Payment Card Industry Data Security Standard.**
- a. 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.
- b. 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.
- c. 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,

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costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the breach.

- d. **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.
- e. **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.

35. CEPAS Electronic Receipt Processing Standard. All electronic commerce applications that allow for electronic receipt of credit or debit card and electronic check transactions must be processed via the State's Centralized Electronic Payment Authorization System (CEPAS). To minimize the risk to the State, full credit/debit card numbers, sensitive authentication data, and full bank account information must never be stored on state-owned IT resources.

36. Records Maintenance, Inspection, Examination, and 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 the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 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 Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

37. Warranties and Representations. Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its

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designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; (h) all information furnished and representations made in connection with this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; (i) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 23, Termination for Cause.

- 38. 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 applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
- 39. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 40. Reserved.**
- 41. Reserved.**
- 42. Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and [Executive Directive 2019-09](#). Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex (as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Contract.
- 43. Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.

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- 44. 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 Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
- 45. Non-Exclusivity.** Nothing contained in this Contract is intended nor will 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 Contract Activities from other sources.
- 46. Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
- 47. Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.
- Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely or fails to respond within 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 does not limit the State's right to terminate the Contract.
- 48. Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
- 49. Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.

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- 50. Schedules.** All Schedules and Exhibits that are referenced herein and attached hereto are hereby incorporated by reference. The following Schedules are attached hereto and incorporated herein:

Schedule A	Statement of Work
Schedule B	Pricing
Schedule C	Accessibility
Schedule D	Data Security Schedule

- 51. Entire Agreement and Order of Precedence.** This Contract, which includes Schedule A – Statement of Work, and schedules and exhibits which are hereby expressly incorporated, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Schedule A – Statement of Work; (b) second, Schedule A – Statement of Work as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.
- 52. Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
- 53. Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 54. Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
- 55. Contract Modification.** This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

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This addendum applies to purchases that will be paid for in whole or in part with funds obtained from the federal government. The provisions below are required, and the language is not negotiable. If any provision below conflicts with the State's terms and conditions, including any attachments, schedules, or exhibits to the State's Contract, the provisions below take priority to the extent a provision is required by federal law; otherwise, the order of precedence set forth in the Contract applies. Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

1. Equal Employment Opportunity

If this Contract is a **"federally assisted construction contract"** as defined in [41 CFR Part 60-1.3](#), and except as otherwise may be provided under [41 CFR Part 60](#), then during performance of this Contract, the Contractor agrees as follows:

- 1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
 Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

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- 4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 5) The Contractor will comply with all provisions of [Executive Order 11246](#) of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 6) The Contractor will furnish all information and reports required by [Executive Order 11246](#) of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in [Executive Order 11246](#) of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in [Executive Order 11246](#) of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of [Executive Order 11246](#) of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not

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applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

2. **Davis-Bacon Act (Prevailing Wage)**

If this Contract is a **prime construction contract** in excess of \$2,000, the Contractor (and its Subcontractors) must comply with the Davis-Bacon Act ([40 USC 3141-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"), and during performance of this Contract the Contractor agrees as follows:

- 1) All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- 2) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- 3) Additionally, contractors are required to pay wages not less than once a week.

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3. Copeland “Anti-Kickback” Act

If this Contract is a contract for construction or repair work in excess of \$2,000 where the Davis-Bacon Act applies, the Contractor must comply with the Copeland “Anti-Kickback” Act ([40 USC 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”), which prohibits the Contractor and subrecipients from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled, and during performance of this Contract the Contractor agrees as follows:

- 1) **Contractor.** The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- 2) **Subcontracts.** The Contractor or Subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA or the applicable federal awarding agency may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- 3) **Breach.** A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and Subcontractor as provided in 29 C.F.R. § 5.12.

4. Contract Work Hours and Safety Standards Act

If the Contract is **in excess of \$100,000 and involves the employment of mechanics or laborers**, the Contractor must comply with [40 USC 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)), as applicable, and during performance of this Contract the Contractor agrees as follows:

- 1) **Overtime requirements.** No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- 2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic,

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including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

- 3) Withholding for unpaid wages and liquidated damages.** The State shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- 4) Subcontracts.** The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

5. Rights to Inventions Made Under a Contract or Agreement

If the Contract is funded by a federal “funding agreement” as defined under [37 CFR §401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

6. Clean Air Act and the Federal Water Pollution Control Act

If this Contract is **in excess of \$150,000**, the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act ([42 USC 7401-7671q](#)) and the Federal Water Pollution Control Act ([33 USC 1251-1387](#)), and during performance of this Contract the Contractor agrees as follows:

Clean Air Act

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Contractor agrees to report each violation to the State and understands and

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agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.

3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

Federal Water Pollution Control Act

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

7. Debarment and Suspension

A “contract award” (see [2 CFR 180.220](#)) must not be made to parties listed on the government-wide exclusions in the [System for Award Management](#) (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement [Executive Orders 12549](#) ([51 FR 6370; February 21, 1986](#)) and [12689](#) ([54 FR 34131; August 18, 1989](#)), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than [Executive Order 12549](#).

- 1) This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- 2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- 3) This certification is a material representation of fact relied upon by the State. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment

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- 4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

8. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of **\$100,000 or more** shall file the required certification in Exhibit 1 – Byrd Anti-Lobbying Certification below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

9. Procurement of Recovered Materials

Under [2 CFR 200.322](#), Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

- 1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
 - a. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - b. Meeting contract performance requirements; or
 - c. At a reasonable price.
- 2) Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- 3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

10. Additional FEMA Contract Provisions.

The following provisions apply to purchases that will be paid for in whole or in part with funds obtained from the Federal Emergency Management Agency (FEMA):

- 1) **Access to Records.** The following access to records requirements apply to this contract:
 - a. The Contractor agrees to provide the State, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized

FEDERAL PROVISIONS ADDENDUM

representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions

- b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed
- c. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract
- d. In compliance with the Disaster Recovery Act of 2018, the State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

2) Changes.

See the provisions regarding modifications or change notice in the Contract Terms.

3) DHS Seal Logo and Flags.

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

4) Compliance with Federal Law, Regulations, and Executive Orders.

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

5) No Obligation by Federal Government.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the State, Contractor, or any other party pertaining to any matter resulting from the Contract.”

6) Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.

Contractor must complete this certification if the purchase will be paid for in whole or in part with funds obtained from the federal government and the purchase is greater than \$100,000.

FEDERAL PROVISIONS ADDENDUM

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, Gud Marketing, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

Contract No. 210000000953

Statewide Advertising Services

BACKGROUND

This pre-qualified pool of Advertising Contractors will provide the following service, in whole or part: Creative Marketing, Digital Media Marketing, Clearinghouse Services and Branding Services, for all State of Michigan Agencies – and will assist with the following:

- Developing and implementing internal and external communications.
 - Create/develop new campaigns and advertising materials.
 - Plan, execute and evaluate paid advertising.
 - Refresh existing ad/campaigns – if applicable.
- Public Relations activities to increase awareness of state initiatives.
 - Highlighting benefits and encouraging public participation.
- Manage and launch integrated digital marketing campaigns.
- Propose and maintain budget allocation for SOWs issued by the State.
- Communicate messages with the General Public possibly utilizing, and not limited to, the following methods:

○ Television (TV)	○ Out-of-Home
○ Radio	○ Transit
○ Social and Digital Media	○ Brochures and Flyers
○ Translated Material (Spanish, other)	
○ Content development & design, for State Websites and Applications	

Please Note the following:

- The primary focus of Advertising Messages is to bring awareness of a specific State initiative and as appropriate, initiate a “Call to Action” to encourage consumers to visit a website, obtain a publication, call a hotline, to talk to their healthcare provider, etc.
- The State reserves the right to add the following via Contract Change Notice (CN):
 - Additional State Agencies,
 - Projects/Campaigns,
 - All other State approved work.
 - Additional Services, including but not limited to:
 - Clearinghouse Services
 - Video Production
 - All other State approved work.

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

SCOPE

When a need is established by the State, the State Agency in need will reach out to the Contractor(s) to initiate services. Requesting Agencies will initiate services through one of the following processes. The process for Statement of Work (SOW) issuance is dictated based off the total cumulate value of the SOW that will be issued.

1. Process for SOWs with a total project value between \$1.00 - \$500,000:

- State Agencies can issue their SOW directly to a single Contractor for service without having to obtain quotes from all pre-qualified Advertising Contractors.
- The Contractor will be given 5-business days to respond to the SOW, or other mutually agreed upon timeframe.
- After the Agency has finalized their SOW with the Contractor, the Agency will Submit a General Routing (GR) Document to DTMB, with the SOW and indicate the amount of funding to be added to their SIGMA Line.
- Finally, the Agency will issue a Delivery Order (DO) to the Contractor with the approved SOW attached, which defines deliverables, pricing, etc.

2. Process for SOWs with a total value between \$500,001 - \$5,000,000.00:

- State Agencies will be required to issue their SOW, along with Evaluation Criteria, for completion by all pre-qualified Advertising Contractors.
 - SOWs will be posted via SIGMA and will contain the following:
 - SOW response instructions,
 - Due dates for Bidder Questions and State Answers
 - Deadline for Quote Response Submission
 - Evaluation Criteria will be determined on a case-by-case basis by the requesting Agency.
- Agencies will evaluate responses received and will then issue an Award Recommendation Notice to SIGMA. After the Award recommendation has been posted the Agency will:
 - Submit a GR document to DTMB, with the selected SOW and Award Recommendation attached.
 - Funding will be issued in SIGMA to the Agency Line for DO issuance.
 - Agencies will issue their DO to the Contractor with approved SOW attached, which defines deliverables, pricing, etc.

3. For all SOWs \$5,000,001 and above –

Agencies can follow the above process for SOWs valued \$500,001 - \$5,000,000.00, or request exemption from DTMB Central Procurement Services to issue a standalone solicitation outside the Contractor pool. The standard Michigan Procurement Policy Manual and procedure must be followed if issued separately.

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

Please Note the Following Process Information:

- Specific information concerning the project/campaign Background & Scope will be presented to the Contractor by the requesting State Agency at the time of SOW issuance.
 - Please Refer to [Schedule E – SOW Template](#), for a blank copy of the SOW to be completed by the State to issue to the Contractor for quote response. Agencies **must** use this template to complete the quote process regardless of threshold.
- A CN to the Master Agreement will not be needed for each SOW and accompanying funds. Acceptance of work is established by the issuance of the DO to the Contractor with SOW and pricing information attached.
- SW Advertising Contractors reserve the right to decline participation an SOW quote process. Contractors must provide justification for declining quote response.

1.1. General Service Requirements

The Contractor will be responsible for providing all Deliverables, Services and Staff to perform the work as indicated below for the State's identified Marketing Campaigns and Projects. This includes but is not limited to the following:

- Developing a marketing strategy, creative concepts, and media plans for State of Michigan campaigns/projects.
- Conduct Market research:
 - Focus Group Testing.
 - Phone or intercept surveys.
 - Place media messages and conduct advertising tracking surveys during campaign life.
 - Other, State approved research methods.
- Produce, duplicate, and distribute media materials.
- Provide Public Relations (PR) services and consultation – upon request.
- At the end of each campaign/project provide media campaign results.
 - Resolve any make-good advertising slots.
 - Media campaign/project results will be provided to the State in a mutually agreed upon format.
 - Media campaign results must include Return on Advertising Spend (ROAS) %.
 - State ROAS% information should be presented against the industry standard ROAS%.
- As directed by the State, the Contractor may be required to present 3 creative concepts for the State to review for all new campaign/advertising work issued under this Contract.
 - The State will select 1 concept presented by the Contractor for further development and implementation.
 - The selected concept will then be taken to final art or script and storyboard – final approval must be received from the applicable Program Manager prior to completion of work.

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

A. The Contractor will be responsible for developing an [Annual Communication Plan/Marketing Plan](#), Plans should be:

- Target audience specific, and include a message, along with strategy, and communication vehicle(s) for communication delivery.
 - The Contractor may be required to utilize several different communication venues/tactics to meet the objectives of each SOW.
- Updated to accommodate additional add-on projects or changes to current projects.
- All work must be approved by the State's applicable Program Manager prior to the completion of work under an SOW.

Please Note the Following:

- The Contractor may be required to develop and present Communication Plans/Marketing Plans to the State on an annual basis, or at a mutually agreed upon frequency between the State and the Contractor.
- Communication Plan(s)/Marketing Plan(s) will be Agency specific, and the State will work with the Contractor to determine necessity and requirements for presentation. Please refer to [Section 7. – Reporting](#) for further details.

B. The Contractor must be able to:

- Maintain balance between existing projects, and the addition of new project throughout the life of the Contract.
- The Contractor must also maintain and provide services for both large- and small-scale projects simultaneously.
- The Contractor may also be required to make changes and adjustments to active projects upon request.

C. The Contractor must conduct market/audience specific research, if applicable, to better assess and understand the target population(s) the State is trying to reach. Research may include, but is not limited it:

- The use of databases such as Nielsen, PRIZM
- Intercept & Phone Surveys
- Focus Groups
- Observational Research
- Other tools as approved to determine/refine the marketing message.

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

- D.** The Contractor will be responsible for developing a social media, digital media, and new media strategic plan(s) to promote the State's identified Marketing Campaigns/Projects to an audience as specified in any resulting SOW.
- E.** The Contractor will be responsible for developing and/or modifying advertising and/or creative concepts and direction including but not limited to:
- 30-second TV,
 - 30 and/or 60-second radio spots and digital media placements.

The Contractor is also responsible for developing and/or modifying advertising marketing and/or creative concepts and direction for 15-second internet pre-roll.

1.2. Media Management and Development – Concepts, Materials & Production

- A.** Contractor must acquire all rights to any materials, creative concepts, and production to allow the State to use the materials as intended under this Contract; including non-rights managed visual materials, that will be used in any form for State Advertising Campaigns/Projects.

The Contractor must also ensure a full buy-out/unrestricted use of talent in all Michigan media for a minimum of 4-years. The Contractor is responsible for all negotiation of talent rights.

Please Note:

- Some Statements of Work issued under this program may not need a full buy-out/unrestricted use of talent in all Michigan Media for a minimum of 4-years.
 - This information will be specified in each Statement of Work (SOW) issued under this program.
- B.** The Contractor must direct and coordinate all TV and radio production and review. When possible video & audio projection, filming and recording must take place within the State of Michigan.

Production Responsibilities include, but are not limited to:

- | | |
|----------------------|-------------------|
| • Scouting Locations | • Recording |
| • Casting | • Music |
| • Shooting | • Special Effects |
| • Editing | • Post-Production |

The Contractor must deliver both rough cuts and finished spots to the State for final approval at a mutually agreed upon date and time between the State and the Contractor.

Please Note: The Contractor must review budgets, casting, music, and special effects with the State for approval from the State's applicable Program Manager prior to production and media placement.

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

- C.** The Contractor is responsible for producing, duplicating, and distributing all media materials, on an as needed basis, in a variety of digital formats as required to meet Michigan Broadcasting specifications for TV and Radio stations. Advertising must include, Beta, Digital Beta, WMV files, mov files, mps. files, etc.
- D.** The Contractor is responsible for producing internal project deliverables to support:
- TV and Radio messages
 - Including repurposed TV & Radio-Ads,
 - Banner Ads,
 - Rich Media ads,
 - Splash pages,
 - Social media ads and graphics,
 - In-game Ads,
 - Search engine optimization, etc.
- E.** The Contractor is responsible for producing additional project deliverables including, but not limited to:
- Billboards
 - Posters
 - Banners
 - Flyers
 - Arrange production of customer merchandise and/or giveaway items to support message goals.
 - E-mail Marketing
 - In-game ads
 - Social Media Graphics
 - Repurpose TV-ads

1.3. Media Plan Development

- A.** The Contractor is responsible for developing media plans for all State Advertising projects, plans must outline at a minimum:
- Media Budget
 - Target Audience
 - Flight Dates
 - Geography/Media Market(s)
 - Advertising Units/Vehicles (TV, cable, radio, outdoor, print, digital, etc.)
 - Media Weight/Gross Point (GRP) levels and expenditures for each medium in each market.
 - Project Outcomes
 - Provide an in-depth evaluation of all media units/vehicles (TV, cable, radio, outdoor, print, digital etc.) available to the State, as requested.

Please Note: Prior to any media plan implementation the Contractor must receive approval from the State's applicable Program Manager.

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

B. The Contractor must identify the resources that will be used to develop media plans, including but not limited to:

- Mediamark Research & Intelligence (MRI)
- Simmons Market Research Bureau (SMRB)
- Scarborough or Media Audit
- PRIZM
- Nielsen, Nielson Audio, Nielson Net Ratings & Nielsen TV Ratings

The Contractor also has access to the following:

- Claritas
- Mediamark Research, Inc.
- Comscore
- American Marketing Association
- Statista
- eMarketer

C. Placement Services must include but are not limited to:

- Paid Media and Value-added media
- Michigan Association of Broadcasters (MBA) media
- Michigan Cable Telecommunications (MCTA) media
- Michigan Press Association (MPA) media

D. Along with the development of communication campaigns the Contractor may be required to conduct Public Relation (PR) Services and Consulting Services, on an as needed basis for the State.

The Contractor is responsible for scheduling, developing, and coordinating all public relations services and press events to increase public awareness of campaigns, as required by the State.

1.4. Media – Negotiations & Placement

A. The Contractor is responsible for all negotiations, purchases, and placement of:

- Radio and TV airtime,
- Publication space,
- Out-of-home advertising,
- Any other State approved forms of media to be used for advertising and promotions.
- Mail services,
- Digital, social media, and
- Other new media placements

Responsibilities for advertising placement also includes:

- Negotiation of matching spot,
- Value added bonuses, to further reach of advertising message(s),
- Shipment of all Radio and TV dubs,
 - With appropriate traffic instructions to the applicable party.

B. The Contractor must negotiate make-good media-weight for any under-delivery to be scheduled during the next paid media flight.

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

- C.** The Contractor must have the ability to extend a budget by means of innovative ideas, creative partnerships, and aggressive negotiation skills to leverage any funding that may be available for paid advertising.

1.5 Additional Service – Production, Special/Sport Events & Website Content

When requested and approved by the State the Contractor must provide, through a 3rd-party or inhouse, the Additional Services identified below:

- All additional work will be added to the Contract via CN, details and pricing will be determined on a case-by-case basis.
- Pricing outlined in [Schedule B](#), must be followed unless otherwise specified by the State's applicable Program Manager.
- All work must be approved by the applicable Program Manager prior to completion and implementation.

A. Production – Plan and organize special events and/or consulting.

B. Sporting Event – Identify and recommend opportunities outside of traditional advertising to reach special audiences. This can include minor league, college, and professional sports teams.

C. Special Events – Plan and organize special events and must be available upon request to assist the State with questions about State organized Events. The State may require at any time that the Contractor take over State organized Events.

D. Website Content Development: New and Existing Material

When requested by the State, the Contractor is responsible for the development, of State Agency Specific website content.

The Contractor will not be responsible for website maintenance and/or site hosting, or domain registry. Once a website(s) and/or content is developed the State will then assume responsibility for hosting, maintenance, and domain registry.

The Contractor may also be required to work with existing State Agency websites or content. Work may include but is not limited to:

- Refreshing current websites content and marketing messages.
- Re-design and/or formatting of website layout and design.
- Develop new or reconfigures existing websites.
- The Contractor is responsible for ensuing all website content developed follow the IT Standards outlined in [Section 3. Advertising with Electronic Deliverables](#).
- Ensure all content developed and provided by the Contractor to the State must be mobile-friendly.
- The Contractor must receive approval from the State's applicable Program Manager prior to any completion of work.

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

2. Transition & Implementation

A. Implementation:

Upon Statement of Work (SOW) issuance, the Contractor must review existing campaigns and performance reports. The Contractor must then make recommendations to maximize the value of the existing media mix for existing campaigns/programs. Value is defined as including, but not limited to: Contracts sold, conversions, event participations, etc.

The Contractor agrees to receive reasonable detailed specifications for all Contract Activities from the State's previous Contractor, regarding Contracted Services provided to the State; to properly provide the Contract Activities required under the Contract.

B. Transition – End of Contract Conversion Responsibilities:

Upon Contract expiration or termination, the Contractor must work with the State personnel and other contractors, if applicable, to convert and/or transition all Contract Activities, Services and Data into a mutually agreed upon format for upload/import into a State-owned database ([See Standard Contract Terms, Section 25 and 32.e.](#))

The Contractor must work with the State and/or previous Contractor during implementation of the transition plan to implement an orderly transition to the new Contractor, if applicable. The Contractor must allow as many personnel as practicable to attend meetings and receive hardcopies and original/master electronic files (excel, PDF, InDesign, etc.) to help maintain the continuity and consistency of the services required by the Contract.

End of Contract Responsibilities must be completed within 4-months of the Contract Expiration or Termination, unless otherwise mutually agreed upon between the State and the Contractor.

3. Advertising with Electronic Deliverables

If/when advertising projects require an Electronic Deliverable the Contractor must follow the standards set forth in this Section.

- **“Digital Content”** means all deliverables, except for IT Components, provided electronically or in a digital format by Contractor under this Contract, including but not limited to documents, reports, content (including content for websites and social media), images, video, and other media productions.
- **“Electronic Deliverable”** means any IT Component or Digital Content Contractor is required to or otherwise provides under this Contract.
- **“IT Component”** means any hardware or software/applications as set forth in a Statement of Work, including without limitation, websites, online surveys, website development and maintenance, the SFTP Server described in Section E, and any other IT products or services provided by Contractor for the performance of the Contract Activities. IT Component does not include Digital Content.

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

- A. IT Policies, Standards and Procedures (PSP)** – All IT Components provided as a result of this Contract must comply with all applicable public and non-public State IT Policies, Standards and Procedures (PSP), of which the publicly available ones are located at: http://www.michigan.gov/dtmb/0,4568,7-150-56355_56579_56755---,00.html

Please Note: Not all applicable PSP's are available publicly. Controlled PSP's applicable to the Contract are available after signing and returning to the State the required Nondisclosure Agreement (NDA).

- B. State of Michigan (SOM) Digital Standard** – All software items provided by the Contractor must adhere to the State of Michigan/Site Standards which can be found at: www.michigan.gov/standards. If software items will be used on a mobile device, the software items must utilize responsive design practices to ensure the application is accessible via a mobile device.

- C. Data Privacy and Information Security**. All IT Components provided/proposed must comply with Schedule D – Data Security Schedule.

- D. End User Operating Environment**. Contractor must accommodate the latest browser versions (including mobile browsers) as well as some pre-existing browsers. To ensure that users with older browsers are still able to access online services, applications must, at a minimum, display and function correctly in standards-compliant browsers and the state standard browser without the use of special plugins or extensions. The rules used to base the minimum browser requirements include:

- Over 2% of site traffic, measured using Sessions or Visitors (or)
- The current browser identified and approved as the State of Michigan standard.

This information can be found at <https://www.michigan.gov/browserstats>. Please use the most recent calendar quarter to determine browser statistics. For those browsers with over 2% of site traffic, except Internet Explorer which requires support for at minimum version 11, the current browser version as well as the previous two major versions must be supported.

Contractor must support the current and future State standard environment at no additional cost to the State.

- E. Traffic** - Transfer all approved advertising materials, with appropriate traffic instructions, to media vendors in time to meet program deadlines. Utilize and maintain a real-time digital ad serving solution that will allow the Contractor to manage digital placements and track ad performance including impressions, clicks, conversions, ad spending, viewability, etc.

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

F. The Contractor will be required to provide a private SFTP site or equivalent (no free web-based file-sharing options will be accepted) for upload and download of files larger than 15MB in a variety of formats including:

- Beta
- Digital Beta
- wmv files
- SFTP equivalent sites must not be free web-based sharing options.
- SFTP site is an IT Component and must meet the requirements of this Section 3.
- mov files
- mp3 files
- Other

The Contractor will maintain the following SFTP or equivalent capabilities:

- SFTP Site: Egnyte.com -- Upload and download speeds are solely dependent on the internet bandwidth of the user.

4. Accessibility/Inclusivity

A. All advertising campaigns must be accessible, inclusive, and understandable for persons of all abilities and backgrounds and should be developed using Universal Design principles. According to the United Nations Convention on the Rights of Persons with Disabilities, “Universal Design” means the design of products, environments, programs, and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design, and shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

B. All Electronic Deliverables provided by the Contractor must conform, at a minimum, to Level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.0 (“**WCAG 2.0 Level AA**”), and Contractor must comply with the terms in Schedule C – Accessibility.

5. Staffing

5.1. Contractor Representative

The Contractor must appoint a Contractor Representative, who will be specifically assigned to the State of Michigan Accounts, who will respond to State inquiries regarding the Contract Activities, answer questions related to ordering and delivery, etc. (the “Contractor Representative”).

- Please refer to the Contract Cover Page, or most recent Change Notice – Contractor Section for Contractor Representative Contact Information.
 - The State may require the Contractor to assign an additional Contractor Representative for specific State Agencies upon request.
- The Contractor must notify the Contract Administrator at least 30-calendar days before removing or assigning a new Contractor Representative.

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

5.2. Customer Service Toll-Free Number

The Contractor must provide Contract Activities during the State's normal working hours Monday – Friday 8:00a.m. – 5:00p.m. EST and possible night and weekend hours depending on the requirements of the project.

Please Note: The Contractor must work with the State to identify a schedule and conduct Contract Activities outside of Monday – Friday 8:00a.m. – 5:00p.m. on an as needed basis.

5.3. Contractor Personnel

The Contractor must appoint individuals for each position who will be directly responsible for the day-to-day operations of the Contract. At least 6 separate individuals must be listed. ("Contractor Personnel").

Contractor Personnel	Minimum Experience
Senior Level Strategic Counsel/ Firm Principal	• 7-years of advertising experience. • 4+-years of experience leading/directing major accounts.
Account Manager	• 5-years of advertising experience. • 2+-years of experience as an account manager.
Creative/ Art Director	• 5-years of experience developing creative advertising. • 2+-years as a creative/art director.
Media Coordinator	• 5-years of planning and or media buying experience.
Researcher(s)	• 3-years primary and secondary research experience.
Copywriter(s)	• 3-years' experience in field.
Billing Coordinator	• 2-years' experience in field.
Graphic Designer	• 3-years' experience in field.
Production Coordinator	• 3-years' experience in field.
Social Media Coordinator	• 5 years of planning and/or media buying experience.
Public Relations Coordinator	• 5-years of experience in field.
Coder	• 2-years of experience in field.
Clerical	• 2-years of experience in field.

Contractor Personnel must be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquiries within 24-hours. Contractor's Key Personnel must be on-site at State locations upon request at mutually agreed upon dates and times.

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

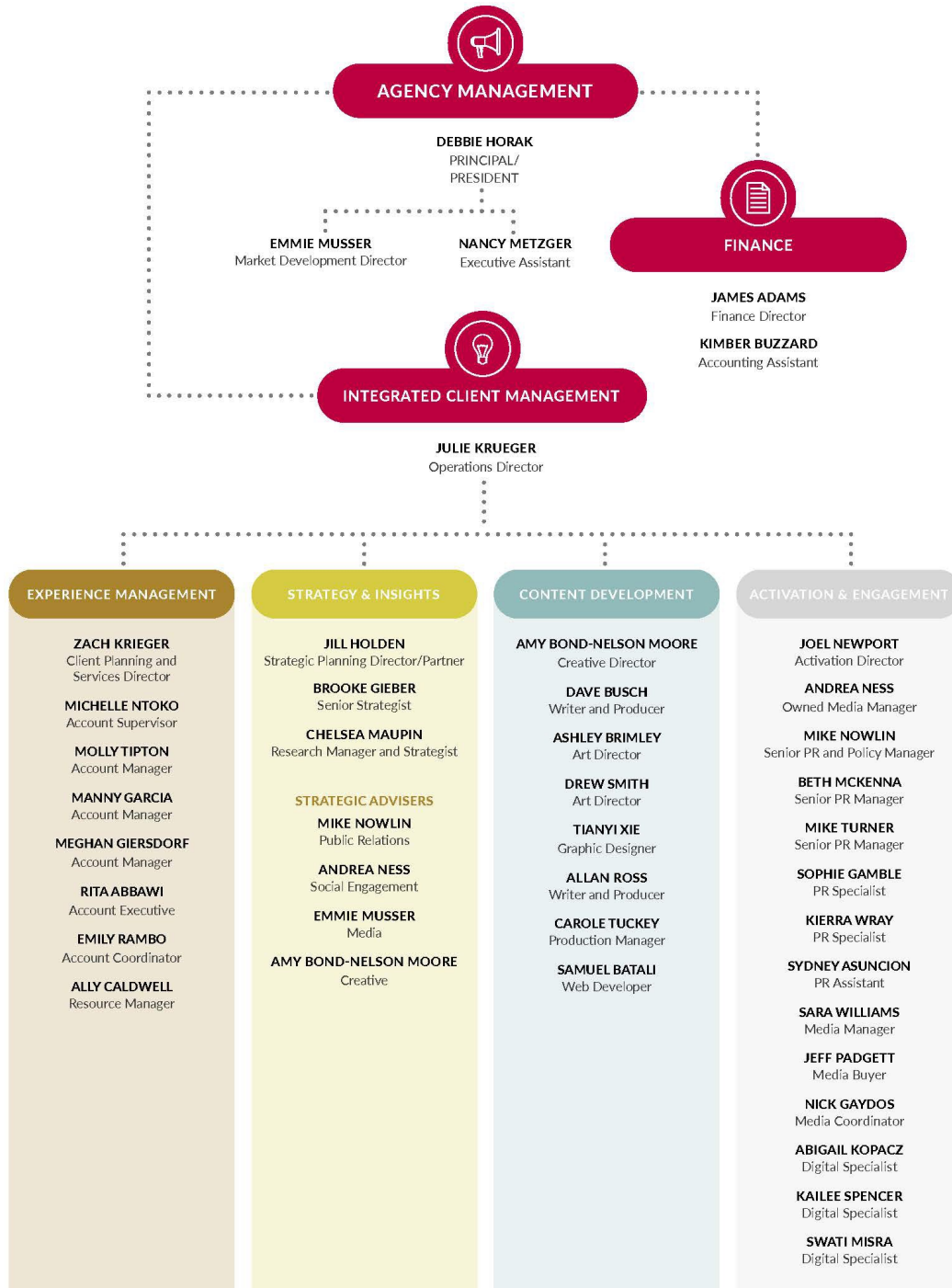
The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Contractor Personnel. Before assigning an individual to any Contractor Personnel position, Contractor will notify the State of the proposed assignment, introduce 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. The State may require a 30-calendar day training period for replacement personnel. Contractor will not remove any Contracted Personnel from their assigned roles on this Contract without the prior written consent of the State.

Position	Name
1. Contractor Representative	Zach Krieger
2. Alternate Contractor Representative	Debbie Horak
3. Strategic Counsel/Firm Principal – SR.	Jill Holden
4. Account Manager	Michelle Ntoko
5. Art Director	Drew Smith
6. Creative Director	Amy Moore
7. Media Coordinator	Sarah Williams
8. Researcher(s)	Chelsea Maupin
9. Copywriter(s)	Dave Busch
10. Billing Coordinator	Jamie Adams
11. Graphic Designer	Tianyi Xie
12. Production Coordinator	Carole Tuckey
13. Social Media Coordinator	Andrea Ness
14. Public Relations Coordinator	Mike Nowlin
15. Coder	Samuel Batali
16. Clerical	Ally Caldwell

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

5.4. Organizational Chart

The following is the Contractor's overall organizational chart that details staff members, by name and title, and subcontractors.



SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

5.5. Disclosure of Subcontractors

If the Contractor intends to utilize subcontractors, the Contractor must disclose the following:

- The legal business name, address, and telephone number.
- A description of the subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities:
 - Providing a complete description of the Contract Activities that will be performed or provided by the subcontractor.
- The relationship of the subcontractor to the Contractor:
 - Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.

Please Note the Following:

- If your organization is not currently utilizing subcontracted services, but may in the future, the above information must then be provided.
 - The State reserves the right to approve all subcontracted parties, approval will be considered as a Change Notice to the Contract.
- The State will not make any pass-through payments for services performed by a 3rd-party (subcontractor) who is performing core work on behalf of the Contractor.
 - Core work can be considered as work outlined in the payment structure of [Schedule B – Pricing](#).
- When outsourcing work to a 3rd-party (subcontractor), the Contractor must obtain 3 quotes for services to be provided. Quotes received must be provided to the State for approval.
 - Outsourcing may include, but is not limited to the following:
 - Production, Research & Media Placement
- The State reserves the right to source 3rd-party work outside of this Contract, and proposed Subcontractors identified below.

5.6. Security

The Contractor's staff may be required to make deliveries to or enter State facilities. The Contractor must explain how it intends to ensure the security of State facilities by indicating the following:

- A.** Whether uniforms and ID badges etc. are used
- B.** Identify the company that will perform background checks, and,
- C.** The scope of the background checks performed.

The Contractor will be subject the following security procedures:

- D.** All personnel accessing criminal justice information systems or facilities are required to pass a fingerprint-based background check. Any criminal convictions may result in the Contractor being refused access to the facility.

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

- E.** The Contractor's staff may be required to make deliveries to or enter State facilities. The State may require the Contractor's personnel to wear State issued identification badges.
- F.** The State will not provide office space, access to State systems or parking for Contractors.
- G.** Contractor and its personnel must comply with all rules, regulations, and policies of the State that are communicated to Contractor in writing, including building security procedures, restriction of access by the State to certain areas of its premises, and general health and safety practices and procedures.

Please Note: The State may require the Contractor's personnel to wear State issued identification badges. The Contractor must explain any additional security measures in place to ensure the security of State facilities.

6. Project Management

6.1. Project Plan

The Contractor must:

- Provide Account Management Services including but not limited to:
 - Meeting with the State to initiate services and review materials, progress, and discuss corrective action plans if needed.
 - Budget planning and documentation for all campaigns and projects
 - Budgeting must be done in accordance with [Schedule B – Pricing](#)
 - Project & Campaign Timing – Contractor will adhere to a predetermined timeline that is mutually agreed upon between the Contractor and the State.
 - For any deviations from the timeline the Contractor must provide notice to the State within 24-hours and provide an updated schedule to the State.

Please Note: All work must be approved by the applicable Program Manager prior to completion of work.

6.2. Project Plan

- A.** The Contractor will carry out this project under the direction and control of the State's applicable Program Manager. Within 14-calendar days of the Effective Date of the SOW issuance, the Contractor must attend a Kick-Off Meeting and submit a Project Plan to the State's applicable Program Manager for final approval.

The Plan must include:

- (a)** Contractor's organizational chart with name and title of personnel assigned to the project, which must align with the Staffing stated in the accepted proposal(s); and
- (b)** Project breakdown showing sub-projects, tasks, and resources and staff required.

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

- (c) Estimated budget breakdowns for projects identified throughout the life of the Contract.

Please Note: Any new projects added to the Contract will also require a project plan, which may be added via Change Notice to the Contract. All work must be approved by the applicable Program Manager prior to completion of work.

- B.** The Contractor must provide the State's applicable Program Manager with an updated Project Plan as requested by the State, and must include the following:
- Project Creative Brief.
 - Proposed Research – if applicable
 - Proposed message strategies – including social media if applicable.
 - Timelines must detail:
 - Days, weeks and/or months' work will be performed.
 - Staff assigned.
 - Work hours allotted.
 - Rate of Pay (hourly) – broken down by individual (staff) assigned to the Project.
 - Total anticipated costs, as a separate appendix to the Project Plan
 - Costs and rates must be in alignment with [Schedule B – Pricing](#) and any other specified pricing document issued for a project.

7. Reporting

- A.** The Contractor must maintain and submit to the Program Manager and applicable designees, reports outlined in Section [7. Reporting](#), which meet the following specifications:
- All reports must be submitted in one of the following formats, unless otherwise specified and approved by the State.
 - Word, Excel, or PDF
 - The State reserves the right to request additional Reports and Content, and/or, change existing Reports and Content.
 - The Contractor may be required to submit additional Reports – additional Reports will be submitted at a mutually agreed upon date, and format between the State and the Contractor.
 - When deemed necessary, the Contractor must work with the State to develop Reporting templates. All templates must first be approved by the State's applicable Program Manager prior to implementation and use.

Please Note: Reports and content must be created for each Agency and generated by each campaign/project. Information from other State Agencies or Projects must not be put into one master report unless otherwise specified by the State's applicable Program Manager.

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

B. Annual Marketing Plan & Report –

The Contractor must present a communications & marketing plan, as referenced in Section 1.1A, on an annual basis, or mutually agreed upon frequency between the Contractor and the State to the State's applicable Program Area and Managers.

- Marketing Plan must be presented to the State's applicable Program Area and Program Managers within 30-days of request.
- The Marketing Reports should include but are not limited to:
 - Summary of results of marketing campaign, including:
 - Summary of campaign results
 - Summary of budget appropriation – specify if any funds are remaining.
- Written reports containing this information must be provided to the State's applicable Program Area and Manager(s) within 7-business days of all presentations.

C. Weekly Report –

To include, but not limited to the following:

- A summary of progress for all projects:
 - Outlining work accomplished during the period,
- Budget information organized by project:
 - Must include an overview of what funds have been spent and what funds are remaining.
- When applicable, provide a summary of results of marketing, promotions, campaigns, and project against timeline established.
- The Contractor must be available to provide status reports on a per request basis to the State's applicable Program Manager.

D. Quarterly Report –

Report must be submitted to the State's applicable Program Manager and Contract Administrator on a quarterly basis. All reports are due 30-days after the beginning of each quarter. Reports must include the following information for the previous quarter:

- Agency Budget Summary by Project:
 - Indicating how much has been spent and how much is remaining for each project, by purchase type as outlined in [Schedule B – Pricing](#).
 - List of Invoice Number(s) for purchases made.
 - Include the vendor name for any Pass-through purchases.
 - Lessons Learned/Effectiveness of each project, including goals and objectives established for each project.
 - Effectiveness in terms of:
 - Costs, reach, and frequency, of the message.
 - Clicks, calls, page views, if applicable
 - Engagement and changes in message perception.
 - Return on Advertising Cost (ROAS) %

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

E. Media Buy Approval Report –

Must be submitted to the State's applicable Program Manager at a minimum of 2-weeks prior to purchase for approval.

- Include a list of all negotiated buys with pricing.
 - Contractor must provide copies of supporting information of intent to purchase.

F. Media Buy Reporting – Reports for all media buys are due 2-months after the media buy concludes, and must include the following information:

- Quantity of Media Purchases made
 - Identify type of media: Online, radio, tv, etc.
 - Price per placement.
 - Per each media buy.
 - Total for all media buys purchased.
 - Identify the intended target group.
 - Indicate when the media buy was approved per [Section 7.1E Media Buy Approval Report](#).
 - List of runtimes for Ad, broken down by project.
- Identify Bonus(es) or PSA schedules utilized.
 - Identify type of media: online, radio, tv, etc.
 - Price per placement.
 - Per each media buy.
 - Total for all bonus(es) or PSA schedules.
 - Indicating when the media was approved per [Section 7.1E Media Buy Approval Report](#).
 - List runtimes for Ad, broken down by project.

Please Note: There will be NO-CHARGE to the State for bonus(es) or PSA schedules.

G. Media Placement Report(s) –

At the end of each Media buy the Contractor must conduct a post-buy review on the placement of media buy(s), review must include:

- Cost Analysis, Reach & Frequency.
- Message Distribution Requirements – if applicable.
 - Requirements will be identified by the State.
- Audience Delivery Assessment – assessment of audience delivery with a goal of receiving plus/minus 10% of the Gross Rating Points (GRPs) in the proposed media buy.
- Bonus Weight Assessment – assessment of Return on Investment (ROI) for the bonus weight must be included for media aired.

Please Note: Media Reports must be submitted to the State 2-months after the conclusion of the Media Buy. The State may require the Contractor to use findings from Media Buy Reports to refine current and/or future media plans.

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

8. Meetings

The Contractor must attend the following meetings:

- Kick-off Meeting within 14-calendar days of the Contract Award, SOW issuance, or Change Notice effective date.
- Annual Project Meeting – if applicable for project.
- End of Contract Meeting – must be held within 30-days prior to Contract Expiration.
 - Additional meetings may be required.
- Weekly Status Call-in – if applicable.
 - For project progress review and issue resolution.
- Monthly Update – if applicable.
 - For project progress during the month.
- The State may request other meetings, as it deems appropriate.

Please Note the Following:

- Meetings will be held in-person or via phone or other mutually agreed upon formats and time between the State and the Contractor.
 - The Contractor must have toll-free conference call capabilities.
- The Contractor must meet with the Subcontractor(s) independently as directed by the State, if applicable.
- The Contractor must respond to all State inquiries within 2-business days of receipt, to confirm receipt and provide anticipated response date.

9. Pricing

9.1. Price Term

Pricing is firm for the first 3-years for the Contract (“Pricing Period”). The first pricing period begins on the Effective Date of the Contract. Adjustments may be requested, in writing, by either party, and will take effect no later than the next pricing period. Pricing may be reconsidered for option years, please see Section [9.2 Price Changes](#).

9.2. Price Changes

Adjustments will be based on changes in actual Contractor costs. Any request must be supported by written evidence documenting the change in costs. The State may consider sources, such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase in pricing; and any other data the State deems relevant.

Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes, for no longer than 30 days, unless extended by mutual agreement.

The Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period.

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

10. Ordering

10.1. Authorizing Document

The appropriate authorizing document for the Contract will be the issuance of a Delivery Order (DO).

11. Invoice and Payment

11.1. Invoice Requirements

All invoices submitted to the State must include:

- (a) Date
- (b) Delivery Order (DO) Number
- (c) Media Buys
- (d) Licensing Fees, Talent Renewals, TV and Radio Dubs, satellite, and communication uplinks – billed at cost, no mark-up may be applied.
- (e) Description of the Contract Activities
 - Including signed estimates and copies of 3rd-party invoices
- (f) Unit Price
 - Broken down by media purchases & Placement fee for each purchase.
 - Please also indicate the media placement agency fee (%)
- (g) Shipping Cost – if applicable & approved by the State
- (h) Cost totals for each service
 - Each Service should be totaled out and added to for the Total Invoice Price.
- (i) Total Invoice Price

Please Note the Following:

- Overtime, holiday pay, travel, or any other out-of-pocket expenses, including meeting attendance, commissionable advertising, membership, or industry conference/seminar attendance will not be paid or reimbursed by the State.
- Invoices must only include completed work – the Contractor must not pre-bill for any services including media placements.
- Invoices will be approved based upon completion of deliverables within the approved Project Plan. Approval is made by the applicable State Program Manager.
- Invoices should be project/Media Buy Specific and must include the following information:
 - Description of all Contract Activities
 - Contractor Maintenance Fee (%)
 - Monthly Fee(s) for the following -- if applicable to the State Agency:
 - Warehouse Storage
 - Phone Service/Call Center
 - Packaging
 - Web Maintenance
 - Each bullet and sub-bullet above should be totaled out and a total overall cost for services provided.

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

11.2. Payment Methods

The State will make payment for Contract Activities via Electronic Fund Transfer (EFT.)

11.3. Acceptance

The following criteria will be used by the State to determine Acceptance of the Services of Deliverables provided under this SOW: For each project, the Contractor first prepares an outline of activities, timelines, and deliverables.

Before approving invoices, for payment, the Program Manager will review deliverables, review project hours and team member involvement in the project. As well as invoices for all expenses charged to verify cost accuracy. The Program Manager will also ensure the Contractors invoices include applicable attachments for media buys.

The State will only reimburse the Contractor for services and/or merchandise authorized by the State and approved by the applicable Program Manager and Delivery Order (DO). Payment will not exceed the amount approved by the Program Manager unless a revised estimate has been submitted and approved by the applicable Program Manager. All invoices must reflect actual work done.

12. Service Level Agreements (SLAs)

The contractor will be held accountable to meet the requirements of the Service Level Requirements established in this Contract.

- The State reserves the right to reconsider or amend SLA amounts for split awards, should they occur.

Service Level Agreements (SLAs) for this Contract will be as follows:

A. Section 7 – Reporting – The Contractor must meet the following timeframes referenced below:

- As referenced in Section 7.B, the Contractor must:
 - Present its Marketing Plan to the State 30-days after request.
 - Present its Marketing Report no later than 60-days after the conclusion of the Marketing Plan.
 - Provide all written report of information presented within 7-business days of all presentations.
- As referenced in Section 7.D, the Contractor must:
 - Provide a Quarterly Report to the State 30-days after the start of the new quarter.
- As referenced in Section 7.E, the Contractor must:
 - Submit a Media Buy Summary to the State's applicable Program Manager at a minimum of 2-weeks prior to the purchase for approval.
- As referenced in Section 7.F & G, the Contractor must:
 - Provide a media buy report(s) that are within 2-months after the media buy concludes.

For any work not completed within the time periods specified, the State is entitled to collect \$500 and an additional \$100 per day for each day Contractor fails to remedy the late or improper completion of the Work. Unless otherwise mutually agreed upon.

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

- B.** The Contractor must respond to all State inquiries within 2-business days of receipt, to confirm receipt and provide anticipated response date.

For any responses not received within the timeframe specified, the State is entitled to collect \$500 and an additional \$100 per day for each day Contractor fails to remedy the late or improper completion of work.

- C.** As referenced in [Section 6.2](#) – The Contractor must, within 14-calendar days of the Effective Date for the Statement of Work (SOW), attend a Kick-Off Meeting and submit a Project Plan to the State’s applicable Program Manager for final approval.

For any work not completed within the 14-day period the State is entitled to collect \$500 and an additional \$100 per day for each day Contractor fails to remedy the late or improper completion of Work, unless otherwise mutually agreed upon.

13. Liquidated Damages

With the exception of the SLAs and liquidated damages listed in [Section 12](#) above, any other late or improper completion of the Contract Activities will cause loss and damage to the State and it would be impracticable and extremely difficult to fix the actual damage sustained by the State.

Therefore, if there is late or improper completion of the Contract Activities the State is entitled to collect liquidated damages in the amount of \$5,000 and an additional \$100 per day for each day Contractor fails to remedy the late or improper completion of the Work.

SCHEDULE B - PRICING

Contract No. 210000000953

Statewide Advertising Services

1. Price proposals must include all costs, including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State (e.g., shipping and handling, per piece pricing, and palletizing).

Please Note: Travel, lodging and meal expenses, including holiday or overtime hours, will not be paid by the State.

2. The Contractor must make all payments to subcontractors utilized without waiting for the State's payment of corresponding invoice(s) and maintain a line of credit for such purposes.
3. The Contractor will be paid per campaign not as a flat percentage or predetermined rate of the total Budget allocated for Advertising by a State Agency. The State will not accept fees, mark-ups, or commission from subcontractors or supplier, etc.
4. The Contractor must pass on all reductions in cost, such as media volume, media buying discounts, early payment discounts, and/or unplaced media for each project.
5. The State cannot guarantee any funds beyond those added via subsequent CN, or SOW issuance.
6. [Schedule B – Pricing Structures](#) -- As indicated in the [Scope](#) section of [Schedule A](#), when a need is established by a State Agency, the Agency in need will reach out to the Contractor to initiate Services.

Requesting State Agencies will pay for Advertising services in one of the formats, or combination of formats depending on the type of service needed. Pricing will be determined with each SOW issuance using the pricing provided below:

7.A. Commission Based Pricing: Contractor Fee %

When proposing the Contractor Fee %, the Contractor Fee must be great enough to cover all costs associated with:

- Campaign & Account Management Services
- Communications & Marketing
- Market Research (of any kind) including Secondary and/or Primary.
- Project Management, Planning, and Implementation
- Creative, Production and additional services (Public Relations)
- All other overhead costs.

Contractor Fee %	
Price Thresholds	%
\$1.00 - \$500,000	25 - 35%
\$500,001 - \$5,000,000	15 - 25%
\$5,000,000 +	5 - 10%
Note: Each SOW issued will be assigned its own unique Contractor Fee%	

SCHEDULE B - PRICING

7.B Webservices – Pricing:

- **Website Content Development – includes pricing for:**
 - Hours needed to develop content for State website(s)
 - All other related fees for development and maintenance
- **Account Management Fee – includes pricing for:**
 - Market Research (of any kind) including Secondary and/or Primary.
 - Creative, Production and additional Services
 - All other overhead costs
- **SFTP Site or Equivalent – indicate the price for service.**

Webservices For Project valued between \$1.00 - \$500,000	Price per Hour
Website Development (Hourly Rate)	\$130.00
Account Management Fee (Hourly Rate)	\$130.00
SFTP Site or Equivalent (Section 3.E) (Indicate Pricing)	\$0
Webservices For Project valued between \$500,000 - \$5,000,000	Price per Hour
Website Development (Hourly Rate)	\$130.00
Account Management Fee (Hourly Rate)	\$130.00
Media Placement Agency Fee (Commission Percentage)	N/A
SFTP Site or Equivalent (Section 3.E) (Indicate Pricing)	\$0

9.C Special/Other Event Pricing –

- Will be paid on a case-by-case basis. A [Schedule B – Pricing](#) document will be issued with each issuance of an SOW, to be completed for each project by the Contractor.
- The State will use the following to calculate the Budget remaining for Advertising Services: Campaign Budget – Contractor Fee% = Amount for Advertising Services.

SCHEDULE C – ACCESSIBILITY

1. **Definitions.** In addition to the definitions found in the Contract Terms, for the purposes of this Contract, the following terms have the following meanings:
 - **“Digital Content”** means all deliverables, except for IT Components, provided electronically or in a digital format by Contractor under this Contract, including but not limited to documents, reports, content (including content for websites and social media), images, video, and other media productions.
 - **“Electronic Deliverable”** means any IT Component or Digital Content Contractor is required to or otherwise provides under this Contract.
 - **“IT Component”** means any hardware or software/applications as set forth in a Statement of Work, including without limitation, websites, online surveys, website development and maintenance, the SFTP Server described in Section E, and any other IT products or services provided by Contractor for the performance of the Contract Activities. IT Component does not include Digital Content.
2. **Accessibility of Contract Activities.**
 - a. All Contract Activities must be accessible, inclusive, and understandable for persons of all abilities and backgrounds. Where applicable, Contract Activities must be provided in alternative formats and consider factors that include, but are not limited to, visual, audible, cognitive, and language communications, as well as mobility considerations. For example, radio ads must also be available in a print and/or video format with ASL interpretation and/or captioning. Billboard sign considerations include, but are not limited to, use of color, font style and size, as well as the potential for distracted driving and seizures. More specifically:
 - i. **Videos and other media productions.** Video and other media productions must be accessible through the use of open and closed captioning, sign language interpretation, audio description, transcripts and/or other effective methods.
 - ii. **Events.** Events, which include but are not limited to, conferences, educational events, and sporting events, must be accessible to qualified attendees with disabilities. For additional guidance, see [Expanding your Market: Accessible Information Exchange Meeting on a Level Playing Field \(ada.gov\)](#).
 1. For the purposes of this section, “accessible” means that all who are qualified to attend can attend, participate in activities, and access information in the needed accessible formats. At a minimum, the location (including parking) will be accessible to the attendees and the requested auxiliary aids and services, alternative formats and reasonable modifications required for equally effective participation will be provided prior to or at the time of the event with reasonable advance notice.

SCHEDULE C – ACCESSIBILITY

2. A statement must be included on event notices regarding accessibility and list contact information for requesting auxiliary aids and services, alternative formats and reasonable modifications, as well as a reasonable timeframe for requests, in advance of the event or meeting. All such statements must be approved in writing by the State.
 3. Any tools used for event registration must be accessible. Any software or other Electronic Deliverables used for registration must meet WCAG 2.0 Level AA and all other requirements under this Contract.
 4. Consider event floor space, and ensure aisles include enough spacing for wheelchair access and service dogs; avoid segregating those with disabilities to the sides and back of the room. Plan to provide real-time captioning of all event speakers and/or ASL interpreters.
 5. Events conducted via videoconferencing must be accessible and at a minimum must follow the State's Best Practices for Hosting Live Meetings, located at: [Disability Resources - Accessible PowerPoint Presentations \(michigan.gov\)](https://michigan.gov/DisabilityResources).
- iii. **Printed materials and documents.** Printed materials and documents, including brochures, must include a notice that the material can be made available to people with disabilities upon request in alternative formats useable to the requestor in a reasonable amount of time.
- iv. **Electronic Deliverables.**
1. For each Electronic Deliverable provided by Contractor, Contractor must provide a Product Accessibility Template ("PAT") for WCAG 2.0 Level AA that describes how the Electronic Deliverable meets the WCAG 2.0 Level AA specifications. All "Not Applicable" or "N/A" responses to the specifications, if any, must be fully explained. A description of the evaluation methods used to support WCAG 2.0 Level AA conformance claims, including, if applicable, any third-party testing, must be provided. If the Contractor is including any third-party products to the State, Contractor must obtain and provide the third-party PATs as well. In addition, for IT Components, Contractor must clarify whether conformance is achieved throughout the entire product (for example, user functionality, administrator functionality, and reporting), or only in limited areas. If applicable, a verification of conformance certified by an industry-recognized third-party must be provided. For each product that does not fully conform to WCAG 2.0 Level AA, Contractor must provide detailed information regarding the plan to achieve conformance, including timelines.
 2. Obligation to Maintain Compliance. Throughout the Term of the Contract, at no additional costs to the State, Contractor must:

SCHEDULE C – ACCESSIBILITY

- a. promptly respond to and resolve, in a manner and timeframe acceptable to the State, any complaint the State receives regarding the accessibility of Contractor's Electronic Deliverables;
 - b. participate in the State of Michigan Digital Standards Review described below and remediate conformance issues in accordance with plans and timelines that are approved in writing by the State;
 - c. at the State's written request, provide Digital Content in one or more alternative formats specified by the State and within timeframes specified by the State; and
 - d. maintain or exceed the WCAG 2.0 Level AA conformance claims provided in each PAT and/or other written materials, including ensuring that no updates or modifications will have any adverse effect on such conformance level.
3. State of Michigan Digital Standards Review. Prior to Electronic Deliverables being accepted, posted on-line, released, put into production, or as otherwise required by the State, the State may conduct a Digital Standards Review to assess accessibility and compliance with WCAG 2.0 Level AA. Contractor must assist the State with such review, which requires Contractor to submit evidence to the State to validate Contractor's accessibility and compliance with WCAG 2.0 Level AA and to respond to questions or requests for additional information from the State. Within 10 business days (or as otherwise agreed to in writing by the parties) from Contractor's receipt of written notification of issues identified from any assessment of accessibility and compliance with WCAG 2.0 Level AA, Contractor must, at its sole cost and expense, remediate all such issues in a manner acceptable to the State. If Contractor is unable to resolve such issues in a manner and timeframe acceptable to the State, in addition to all other remedies available to the State, the State may terminate this Contract for cause under **Section 23** of the Contract Terms and Conditions.
- b. Failure to comply with the requirements in this **Schedule** shall constitute a material breach of this Contract.

SCHEDULE D – DATA SECURITY REQUIREMENTS

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

“Contractor Security Officer” has the meaning set forth in **Section 2** of this Schedule.

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

“FISMA” means the Federal Information Security Modernization Act of 2014 (Pub.L. No. 113-283 (Dec. 18, 2014.)).

“Harmful Code” means any software, hardware or other technologies, devices or means, the purpose or effect of which is to: (a) permit unauthorized access to, or to destroy, disrupt, disable, encrypt, modify, copy, or otherwise harm or impede in any manner, any (i) computer, software, firmware, data, hardware, system or network, or (ii) any application or function of any of the foregoing or the integrity, use or operation of any data processed thereby; or (b) prevent the State or any authorized user from accessing or using the Services as intended by this Contract, and includes any virus, bug, trojan horse, worm, backdoor or other malicious computercode and anytime bomb or drop dead device.

“Hosting Provider” means any Permitted Subcontractor that is providing any or all of the Hosted Services underthis Contract.

“Hosted Services” means the hosting, management and operation of the operating environment, software, other services (including support and subcontracted services), and related resources for remote electronic access and use by the State and its authorized users, including any services and facilities related to disaster recovery obligations.

“IT Component” has the meaning set forth in Schedule C.

“NIST” means the National Institute of Standards and Technology.

“PCI” means the Payment Card Industry.

“PSP” or **“PSPs”** means the State’s IT Policies, Standards and Procedures

“SSAE” means Statement on Standards for Attestation Engagements.

“Security Accreditation Process” has the meaning set forth in **Section 6** of this Schedule.

2. Security Officer. Contractor will appoint a Contractor employee to respond to the State’s inquiries regarding the security of the Hosted Services who has sufficient knowledge of the security of the Hosted Services and the authority to act on behalf of Contractor in matters pertaining thereto (**“Contractor Security Officer”**).

SCHEDULE C – ACCESSIBILITY

- 3. Contractor Responsibilities.** 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 any State Data in Contractor's or its subcontractor's possession; and
 - (e) ensure that all Contractor Representatives comply with the foregoing.

The State has established Information Technology (IT) PSPs to protect IT resources under the authority outlined in the overarching State 1305.00 Enterprise IT Policy. 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 public and non-public State IT policies and standards, of which the publicly available ones are at https://www.michigan.gov/dtmb/0,5552,7-358-82547_56579_56755---,00.html.

- 4. Acceptable Use Policy.** To the extent that Contractor has access to the State's IT environment, Contractor must comply with the State's Acceptable Use Policy, see https://www.michigan.gov/documents/dtmb/1340.00.01_Acceptable_Use_of_Information_Technology_Standard_458958_7.pdf. All Contractor Personnel will be required, in writing, to agree to the State's Acceptable Use Policy before accessing State systems. The State reserves the right to terminate Contractor's and/or subcontractor(s) or any Contractor Personnel's access to State systems if the State determines a violation has occurred.
- 5. Protection of the State's Information.** Throughout the Term and at all times in connection with its actual or required performance of the Services, Contractor will:
- 5.1.** If Hosted Services are provided by a Hosting Provider, ensure each Hosting Provider maintains FedRAMP authorization for all Hosted Services environments throughout the Term, and in the event a Hosting Provider is unable to maintain FedRAMP authorization, the State, at its sole discretion, may either a) require the Contractor to move the Software and State Data to an alternative Hosting Provider selected and approved by the State at Contractor's sole cost and expense without any increase in Fees, or b) immediately terminate this Contract for cause pursuant to **Section 15.1** of the Contract;
 - 5.2.** for Hosted Services provided by the Contractor, maintain either a FedRAMP authorization or an annual SSAE 18 SOC 2 Type II audit based on State required NIST Special Publication 800-53 MOD Controls using identified controls and minimum values as established in applicable State PSPs;

SCHEDULE D – DATA SECURITY REQUIREMENTS

- 5.3.** ensure that the Software and State Data is securely hosted, supported, administered, accessed, and backed up in a data center(s) that resides in the continental United States, and minimally meets Uptime Institute Tier 3 standards (www.uptimeinstitute.com), or its equivalent;
- 5.4.** maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State Data that complies with the requirements of the State's data security policies as set forth in this Contract, and must, at a minimum, remain compliant with FISMA and NIST Special Publication 800-53 MOD Controls using identified controls and minimum values as established in applicable State PSPs;
- 5.5.** provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, encryption, transfer, commingling or processing of such information that ensure a level of security appropriate to the risks presented by the processing of State Data and the nature of such State Data, consistent with best industry practice and applicable standards (including, but not limited to, compliance with FISMA, NIST, CMS, IRS, FBI, SSA, HIPAA, FERPA and PCI requirements as applicable);
- 5.6.** take all reasonable measures to:
 - (a)** secure and defend all locations, equipment, systems and other materials and facilities employed in connection with the Services against "hackers" and others who may seek, without authorization, to disrupt, damage, modify, access or otherwise use Contractor Systems or the information found therein; and
 - (b)** prevent (i) the State and its authorized users from having access to the data of other customers or such other customer's users of the Services; (ii) State Data from being commingled with or contaminated by the data of other customers or their users of the Services; and (iii) unauthorized access to any of the State Data;
- 5.7.** ensure that State Data is encrypted in transit and at rest using FIPS validated AES encryption modules and a key size of 256 bits or higher;
- 5.8.** ensure the Hosted Services support Identity Federation/Single Sign-on (SSO) capabilities using Security Assertion Markup Language (SAML), Open Authentication (OAuth) or comparable State approved mechanisms;
- 5.9.** ensure the Hosted Services implements NIST compliant multi-factor authentication for privileged/administrative and other identified access; and
- 5.10.** as provided by Contractor, ensure the IT Components do not and will not at anytime during the Term contain any Harmful Code.

SCHEDULE D – DATA SECURITY REQUIREMENTS

- 6. Security Accreditation Process.** Throughout the Term, Contractor will assist the State, at no additional cost, with its **Security Accreditation Process**, which includes the development, completion and on-going maintenance of a system security plan (SSP) using the State's automated governance, risk and compliance (GRC) platform, which requires Contractor to submit evidence, upon request from the State, in order to validate Contractor's security controls within two weeks of the State's request. On an annual basis, or as otherwise required by the State such as for significant changes, re-assessment of the system's controls will be required to receive and maintain authority to operate (ATO). All identified risks from the SSP will be remediated through a Plan of Action and Milestones (POAM) process with remediation time frames based on the risk level of the identified risk. For all findings associated with the Contractor's solution, at no additional cost, Contractor will be required to create or assist with the creation of State approved POAMs and perform related remediation activities. The State will make any decisions on acceptable risk, Contractor may request risk acceptance, supported by compensating controls, however only the State may formally accept risk. Failure to comply with this section will be deemed a material breach of the Contract.
- 7. Unauthorized Access.** Contractor may not access, and shall not permit any access to, State systems, in whole or in part, whether through the Hosted Services or otherwise, without the State's express prior written authorization. Such authorization may be revoked by the State in writing at any time in its sole discretion. Any access to State systems must be solely in accordance with the Contract and this Schedule, and in no case exceed the scope of the State's authorization pursuant to this Section. All State-authorized connectivity or attempted connectivity to State systems shall be only through the State's security gateways and firewalls and in compliance with the State's security policies set forth in the Contract as the same may be supplemented or amended by the State and provided to Contractor from time to time.
- 8. Security Audits.**

 - 8.1.** During the Term, Contractor will maintain complete and accurate records of its data protection practices, IT security controls, and the security logs relating to State Data, including but not limited to any backup, disaster recovery or other policies, practices or procedures relating to the State Data and any other information relevant to its compliance with this Contract.
 - 8.2.** 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. 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. If the State chooses to perform an on-site audit, Contractor will, make all such records, appropriate personnel and relevant materials available during normal business hours for inspection and audit by the State or an independent data security expert that is reasonably acceptable to Contractor, provided that

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the State: (i) gives Contractor at least five (5) Business Days prior notice of any such audit; (ii) undertakes such audit no more than once per calendar year, except for good cause shown; and (iii) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Contractor's normal business operations and that complies with the terms and conditions of all data confidentiality, ownership, privacy, security and restricted use provisions of the Contract. The State may, but is not obligated to, perform such security audits, which shall, at the State's option and request, include penetration and security tests, of any and all Hosted Services and their housing facilities and operating environments.

8.3. During the Term, Contractor will, when requested by the State, provide a copy of Contractor's or Hosting Provider's FedRAMP System Security Plan(s) or SOC 2 Type 2 report(s) to the State within two weeks of the State's request. The System Security Plan and SSAE audit reports will be recognized as Contractor's Confidential Information.

8.4. 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.

8.5. The State reserves the right, at its sole election, to immediately terminate this Contract or a 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 8**.

9. Application Scanning. During the Term, Contractor must, at its sole cost and expense, scan all Contractor provided applications, and must analyze, remediate and validate all vulnerabilities identified by the scans as required by the State SecureWeb Application and other applicable PSPs.

Contractor's application scanning and remediation must include each of the following types of scans and activities:

9.1. Dynamic Application Security Testing (DAST) – Scanning interactive application for vulnerabilities, analysis, remediation, and validation (may include Interactive Application Security Testing (IAST)).

- (a)** Contractor must either a) grant the State the right to dynamically scan a deployed version of the Software; or b) in lieu of the State performing the scan, Contractor must dynamically scan a deployed version of the Software using a State approved application scanning tool, and provide the State a vulnerabilities assessment after Contractor has completed such scan. These scans and assessments i) must be completed and provided to the State quarterly (dates to be provided by the State) and for each major release; and ii) scans must be completed in a non-production environment with verifiable matching source code and supporting infrastructure configurations or the actual production environment.

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9.2. Static Application Security Testing (SAST) - Scanning Source Code for vulnerabilities, analysis, remediation, and validation.

- (a)** For Contractor provided applications, Contractor, at its sole expense, must provide resources to complete static application source code scanning, including the analysis, remediation and validation of vulnerabilities identified by application Source Code scans. These scans must be completed for all Source Code initially, for all updated Source Code, and for all Source Code for each major release and Contractor must provide the State a vulnerability assessment after Contractor has completed the required scans.

9.3. Software Composition Analysis (SCA) – Third Party and/or Open Source Scanning for vulnerabilities, analysis, remediation, and validation.

- (a)** For Software that includes third party and open source software, all included third party and open source software must be documented and the source supplier must be monitored by the Contractor for notification of identified vulnerabilities and remediation. SCA scans may be included as part of SAST and DAST scanning or employ the use of an SCA tool to meet the scanning requirements. These scans must be completed for all third party and open source software initially, for all updated third party and open source software, and for all third party and open source software in each major release and Contractor must provide the State a vulnerability assessment after Contractor has completed the required scans if not provided as part of SAST and/or DAST reporting.

9.4. In addition, application scanning and remediation may include the following types of scans and activities if required by regulatory or industry requirements, data classification or otherwise identified by the State.

- (a)** If provided as part of the solution, all native mobile application software must meet these scanning requirements including any interaction with an application programming interface (API).
- (b)** Penetration Testing – Simulated attack on the application and infrastructure to identify security weaknesses.

10. Infrastructure Scanning.

- 10.1.** For Hosted Services, Contractor must ensure the infrastructure and applications are scanned using an approved scanning tool (Qualys, Tenable, or other PCI Approved Vulnerability Scanning Tool) at least monthly and provide the scan's assessments to the State in a format that is specified by the State and used to track the remediation. Contractor will ensure the remediation of issues identified in the scan according to the remediation time requirements documented in the State's PSPs.

SCHEDULE D – DATA SECURITY REQUIREMENTS

11. Nonexclusive Remedy for Security Breach.

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