STATE OF MICHIGAN PROCUREMENT

Department of Technology, Management, and Budget

525 W. Allegan St., Lansing, MI 48913
P.O. Box 30026, Lansing, MI 48909

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **171-210000000223**

between
THE STATE OF MICHIGAN
and

CONTRACTOR	
	Center for Information Management
	7322 Newman Blvd 2 Suite 100
	Dexter, MI48130
	Douglas A Zimmer
	734-930-0855
	doug@ciminc.com
	CV0029386

STATE			
	Program Manager	John Moore	DTMB
		517-331-5065	
		MooreJ7@michigan.gov	
	Contract Administrator	Jennifer May	DTMB
		517-242-6664	
		MayJ7@michigan.gov	

CONTRACT SUMMARY			
DESCRIPTION: MDHHS MI Choice Information System Data Base and Reports (COMPASS)			
INITIAL EFFECTIVE DATE	**INITIAL EXPIRATION DATE**	**INITIAL AVAILABLE OPTIONS**	**EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW**
10/1/2020	10/1/2023	2 – 1 year	10/1/2023
PAYMENT TERMS		**DELIVERY TIMEFRAME**	
Net 45			
ALTERNATE PAYMENT OPTIONS			**EXTENDED PURCHASING**
☐ P-card ☐ Payment Request (PRC) ☐ Other			☒ Yes ☐ No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			$1,670,100.00

FOR THE CONTRACTOR:

_____
Company Name

_____
Authorized Agent Signature

_____
Authorized Agent (Print or Type)

_____
Date

FOR THE STATE:

_____
Signature

_____
Name & Title

_____
Agency

_____
Date

STATE OF MICHIGAN

CONTRACT TERMS

This Software as a Service Contract (this "**Contract**") is agreed to between the State of Michigan (the "**State**") and Center for Information Management ("**Contractor**"), a MICHIGAN CORPORATION. This Contract is effective on October 1, 2020 ("**Effective Date**"), and unless earlier terminated, will expire on October 1, 2023 (the "**Term**").

This Contract may be renewed for up to 2 additional 1 year periods. Renewal must be by written notice from the State and will automatically extend the Term of this Contract.

1. **Definitions.**

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

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

   "**Action**" has the meaning set forth in **Section 15.1**.

   "**Allegedly Infringing Features**" has the meaning set forth in **Section 15.3(b)(ii)**.

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

   "**Availability Requirement**" has the meaning set forth in **Section 5**.

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

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

   "**Code**" has the meaning set forth in **Section 21.**

   "**Confidential Information**" has the meaning set forth in **Section 12.1**.

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

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

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

"**Contractor Personnel**" means all employees and agents of Contractor, all Subcontractors and all employees and agents of any Subcontractor, involved in the performance of Services.

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

"**Contractor Service Manager**" has the meaning set forth in **Section 2.5(a)**.

"**Documentation**" means all generally available documentation relating to the Services, including all user manuals, operating manuals and other instructions, specifications, documents and materials, in any form or media, that describe any component, feature, requirement or other aspect of the Services, including any functionality, testing, operation or use thereof.

"**DR Plan**" has the meaning set forth in **Section 14(a)**.

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

"**Fees**" has the meaning set forth in **Section 9.1**.

"**Force Majeure Event**" has the meaning set forth in **Section 19**.

"**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, distort, encrypt, modify, or otherwise harm or impede in any manner, any (i) computer, software, firmware, hardware, data, 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 or Contractor Systems as intended by this Contract, and includes any virus, bug, trojan horse, worm, backdoor or other malicious computer code and any time bomb or drop dead device.

"**HIPAA**" has the meaning set forth in **Section 10.1**.

"**Hosted Services**" has the meaning set forth in **Section 2.1(a)**.

"**Intellectual Property Rights**" means any and all rights comprising or relating to: (a) patents, patent disclosures and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith; (c) authorship rights, copyrights and copyrightable works (including computer programs) and rights in data and databases; (d) trade secrets, know-how and other confidential information; and (e) all other

intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable Law in any jurisdiction throughout the world.

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

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

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

"**PAT**" means a document or product accessibility template, including any Information Technology Industry Council Voluntary Product Accessibility Template or VPAT®, that specifies how information and software products, such as websites, applications, software and associated content, conform to WCAG 2.0 Level AA.

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

"**Personal Health Information (PHI)**" has the meaning set forth in **Section 10.1**.

"**Personally Identifiable Information (PII)**" has the meaning set forth in **Section 10.1**.

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

"**RPO**" or "**Recovery Point Objective**" means the maximum amount of potential data loss in the event of a disaster.

"**RTO**" or "**Recovery Time Objective**" means the period of time to fully restore the Hosted Services in the case of a disaster.

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

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

"**Representatives**" means a party's employees, officers, directors, consultants, legal advisors and, with respect to Contractor, Contractor's Subcontractors.

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

"**Service Level Agreement**" means the service level agreement attached as **Schedule C** to this Contract, setting forth Contractor's obligations with respect to the hosting, management, and operation of the Service Software.

"**Service Software**" means any and all software applications and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Contractor provides remote access to and use of as part of the Services.

"**Services**" has the meaning set forth in **Section 2**

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

"**Specifications**" means the specifications for the Services set forth in the applicable Statement of Work and, to the extent consistent with and not limiting of the foregoing, the Documentation.

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

"**State Data**" has the meaning set forth in **Section 10.1**.

"**State Modification**" has the meaning set forth in **Section 15.2(a)**.

"**State Project Manager**" has the meaning set forth in **Section 2.8**.

"**State Systems**" means the information technology infrastructure, including the computers, software, databases, electronic systems (including database management systems) and networks, of the State or any of its designees.

"**Statement of Work**" has the meaning set forth in **Section 2.1(a)**. The Initial Statement of Work is attached as **Schedule A**, and subsequent Statements of Work shall be sequentially identified and attached as Schedule A-1, A-2, A-3, etc.

"**Stop Work Order**" has the meaning set forth in **Section 8**.

"**Subcontractor**" means any entity that performs any Services under this Contract and otherwise has the meaning set forth in **Section 2.4(a)**.

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

"**Support Service Level Requirement**" has the meaning set forth in **Section 6**.

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

"**Transition Period**" has the meaning set forth in **Section 7.3.**

"**Transition Responsibilities**" has the meaning set forth in **Section 7.3.**

"**User Data**" means any and all information reflecting the access or use of the Hosted Services by or on behalf of the State or any Authorized User, including any end user profile, visit, session, impression, click-through or click-stream data, meta-data, and any statistical or other analysis, information or data based on or derived from any of the foregoing.

"**WCAG 2.0 Level AA**" means level AA of the World Wide Web Consortium Web Content Accessibility Guidelines version 2.0.

2. **Services.**

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

(a)   the hosting, management and operation of the Service Software and other services for remote electronic access and use by the State and its Authorized Users ("**Hosted Services**") as described in one or more written, sequentially numbered, statements of work referencing this Contract, including all Specifications set forth in such statements of work, which, upon their execution will be attached as **Schedule A** to this Contract and by this reference are incorporated in and made a part of this Contract (each, a "**Statement of Work**");

(b)   maintain the Availability Requirement set forth in the Service Level Agreement attached as **Schedule C** to this Contract;

(c)   provide maintenance and Support Services as set forth in the Service Level Agreement, attached as **Schedule C**;

(d)   implement and maintain the security requirements set forth in **Schedule D** to this Contract;

(e)   maintain a DR plan, which is attached as **Schedule E** to this Contract; and

(f)   such other services as may be specified in the applicable Statement of Work.

2.2   Change Notices.

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

(b)   In the event the Services are customizable, a more detailed change control process may be specified in the applicable Statement of Work. In such event, the change control process set forth in such Statement of Work shall control.

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

2.4   Subcontracting. Contractor will not itself, and will not permit any Person to, subcontract any Services, in whole or in part, without the State's prior written consent, which consent may be given or withheld in the State's sole discretion. Without limiting the foregoing:

(a)   Contractor must ensure each Contractor subcontractor (including any subcontractor of a Contractor subcontractor, each, a "**Subcontractor**") complies with all relevant terms of this Contract, including all provisions relating to State Data or other Confidential Information of the State;

(b)   the State's consent to any such Subcontractor does not relieve Contractor of its representations, warranties or obligations under this Contract;

(c)   Contractor will remain responsible and liable for any and all: (i) performance required hereunder, including the proper supervision, coordination and performance of the Services; and (ii) acts and omissions of each Subcontractor (including, such Subcontractor's employees and agents, who, to the extent they are involved in providing any Services, are deemed Contractor Personnel) to the same extent as if such acts or omissions were by Contractor;

(d)   any noncompliance by any Subcontractor or its employees or agents with the provisions of this Contract or any Statement of Work will constitute a breach by Contractor;

(e)   prior to the provision of Services by any Subcontractor, Contractor must obtain from each such proposed Subcontractor:

(i)   the identity of such Subcontractor and the location of all its data centers, if any, that will be used in Processing any State Data, which information Contractor shall promptly disclose to the State in writing; and

(ii)   a written confidentiality and restricted use agreement, giving the State rights at least equal to those set forth in **Section 10** (State Data), **Section 12** (Confidentiality), **Section 13** (Security) and **Section 14** (Disaster Recovery) and containing the Subcontractor's acknowledgment of, and agreement to, the provisions of **Section 2.5** (Contractor Personnel), a fully-executed copy of which agreement Contractor will promptly provide to the State upon the State's request.

2.5   Contractor Personnel. Contractor will:

(a)   subject to the prior written approval of the State, appoint: (i) a Contractor employee to serve as a primary contact with respect to the Services who will have the authority to act on behalf of Contractor in matters pertaining to the receipt and processing of support requests and the Support Services (the "**Contractor Service Manager**"); and (ii) a Contractor employee to respond to the State's inquiries regarding the security of the Contractor Systems who has sufficient knowledge of the security of the Contractor Systems and the authority to act on behalf of Contractor in matters pertaining thereto ("**Contractor Security Officer**"); and (iii) other Key Personnel, who will be suitably skilled, experienced and qualified to perform the Services;

(b)   provide names and contact information for Contractor's Key Personnel in the Statement of Work;

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

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

2.6   Management and Payment of Contractor Personnel.

(a)   Contractor is solely responsible for the payment of Contractor Personnel, including all fees, expenses and compensation to, by or on behalf of any Contractor Personnel and, if applicable, the withholding of income taxes and payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits.

(a)   Contractor will ensure that no Person who has been convicted of a felony or any misdemeanor involving, in any way, theft, fraud, or bribery provides any Services or has access to any State Data, State Systems or State facilities. On a case-by-case basis, the State may request that

Contractor initiate a background check on any Contractor Personnel before they may have access to State Data, State Systems or State facilities. Any request for a background check shall be initiated by the State and must be reasonably related to the type of work requested. The scope of the background check is at the discretion of the State and the results shall be used solely to determine the eligibility of Contractor Personnel to work with State Data, State Systems or in State facilities. If provided to the State, results of background checks will be promptly returned to Contractor and will be treated as Confidential Information. All investigations will include a Michigan State Police Background check (ICHAT) and may include a National Crime Information Center (NCIC) Finger Print check. Contractor will present attestation of satisfactory completion of such tests.   Contractor is responsible for all costs and expenses associated with such 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.

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

2.8   State Project Manager. The State will appoint and, in its reasonable discretion, replace, a State employee to serve as the primary contact with respect to implementation of the Services (the "**State Project Manager**").

3. **License Grant and Restrictions.**

3.1   Contractor License Grant. Contractor hereby grants to the State, exercisable by and through its Authorized Users, a nonexclusive, royalty-free, irrevocable (except as provided herein) right and license during the Term and such additional periods, if any, as Contractor is required to perform Services under this Contract or any Statement of Work, to:

(a)   access and use the Hosted Services, including in operation with other software, hardware, systems, networks and services, for the State's business purposes, including for Processing State Data;

(b)   generate, print, copy, upload, download, store and otherwise Process all GUI, audio, visual, digital and other output, displays and other content as may result from any access to or use of the Services;

(c)   prepare, reproduce, print, download and use a reasonable number of copies of the Specifications and Documentation for any use of the Services under this Contract; and

(d)   access and use the Services for all such non-production uses and applications as may be necessary or useful for the effective use of the Hosted Services hereunder, including for purposes of analysis, development, configuration, integration, testing, training, maintenance, support and repair, which access and use will be without charge and not included for any purpose in any calculation of the State's or its Authorized Users' use of the Services, including for purposes of assessing any Fees or other consideration payable to Contractor or determining any excess use of the Hosted Services as described in **Section 3.3**.

3.2   <u>License Restrictions</u>. The State will not: (a) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make the Hosted Services available to any third party, except as expressly permitted by this Contract or in any Statement of Work; or (b) use or authorize the use of the Services or Documentation in any manner or for any purpose that is unlawful under applicable Law.

3.3   <u>Use</u>. The State will pay Contractor the corresponding Fees set forth in the Statement of Work for all Authorized Users access and use of the Service Software. Such Fees will be Contractor's sole and exclusive remedy for use of the Service Software, including any excess use.

3.4   <u>State License Grant</u>. The State hereby grants to Contractor a limited, non-exclusive, non-transferable license (i) to use the State's (or individual agencies, department's or division's) name, trademarks, service marks or logos, solely in accordance with the State's specifications, and (ii) to display, reproduce, distribute and transmit in digital form the State's (or individual agencies, department's or division's) name, trademarks, service marks or logos in connection with promotion of the Services as communicated to Contractor by the State. Use of the State's (or individual agencies, department's or division's) name, trademarks, service marks or logos will be specified in the applicable Statement of Work.

4.   **Service Preparation, Testing and Acceptance.**

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

4.2   <u>Testing and Acceptance</u>.

(a)   When Contractor notifies the State in writing that the Hosted Services are ready for use in a production environment, the State will have thirty (30) days (or such other period as may be agreed upon by the Parties in writing) from receipt of the notice to test the Hosted Services to determine whether they comply in all material respects with the requirements of this Contract and the Specifications.

(b)   Upon completion of the State's testing, the State will notify Contractor of its acceptance ("**Accept**" or "**Acceptance**") or, if it has identified any noncompliance with the Specifications, rejection ("**Reject**" or "**Rejection**") of the Hosted Services. If the State Rejects the Hosted Services, the State will

provide a written list of items that must be corrected. On receipt of the State's notice, Contractor will promptly commence, at no additional cost or charge to the State, all reasonable efforts to complete, as quickly as possible and in any event within twenty (20) days (or such other period as may be agreed upon by the Parties in writing) from receipt of the State's notice, such necessary corrections, repairs and modifications to the Hosted Services to bring them into full compliance with the Specifications.

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

(i)   require the Contractor to repeat the correction, repair and modification process set forth in **Section 4.2(b)** at no additional cost or charge to the State; or

(ii)   terminate any and all of the relevant Statement of Work, this Contract and any other Statements of Work hereunder.

(d)   The parties will repeat the foregoing procedure until the State Accepts the Hosted Services or elects to terminate the relevant Statement of Work as provided in **Section 4.2(c)(ii)** above. If the State so terminates the relevant Statement of Work, Contractor must refund to the State all sums previously paid to Contractor under such Statement of Work within ten (10) Business Days of the State's written notice of termination, and the State will be relieved of all obligations thereunder.

5.   Service Availability. Contractor will make the Hosted Services available, as measured over the course of each calendar month during the Term, in accordance with the provisions set forth in the Service Level Agreement, attached as **Schedule C** to this Contract (the "**Availability Requirement**").

6.   Support and Maintenance Services. Contractor will provide Hosted Service maintenance and support services (collectively, "**Support Services**") in accordance with the provisions set forth in the Service Level Agreement, attached as **Schedule C** to this Contract (the "**Support Service Level Requirement**").

7.   Termination, Expiration and Transition.

7.1   <u>Termination for Cause</u>. In addition to any right of termination set forth elsewhere in this Contract:

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

(b)　If the State terminates this Contract under this **Section 7.1**, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of this Contract, the termination will be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in **Section 7.2**.

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

7.2　Termination for Convenience. The State may immediately terminate this Contract in whole or in part, without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance immediately, or (b) continue to perform in accordance with **Section 7.3**. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities to the extent the funds are available.

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

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

(a)　Contractor will be obligated to perform all Transition Responsibilities specified in **Section 7.3**.

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

(c)   Contractor will (i) return to the State all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the State's Confidential Information; (ii) permanently erase the State's Confidential Information from its computer systems; and (iii) certify in writing to the State that it has complied with the requirements of this **Section 7.4(c)**, in each case to the extent such materials are not required by Contractor for Transition Responsibilities, if any.

(d)   Notwithstanding any provisions of this Contract or any Statement of Work to the contrary, upon the State's termination of this Contract or any Statement of Work for cause pursuant to **Section 7.1**, the State will have the right and option to continue to access and use the Services under each applicable Statement of Work, in whole and in part, for a period not to exceed one hundred and eighty (180) days from the effective date of such termination pursuant to the terms and conditions of this Contract and each applicable Statement of Work and at a reduced rate of fifty (50%) off the applicable Fees set forth in each such Statement of Work.

7.5   Survival. The rights, obligations and conditions set forth in this **Section 7.5** and **Section 1** (Definitions), **Section 7.3** (Effect of Termination; Data Retention), **Section 10** (State Data), **Section 12** (Confidentiality), **Section 13** (Security), **Section 15.1** (Indemnification), **Section 16** (Limitations of Liability), **Section 17** (Representations and Warranties), **Section 18** (Insurance) and **Section 21** (Effect of Contractor Bankruptcy) and **Section 22** (General Provisions), and any right, obligation or condition that, by its express terms or nature and context is intended to survive the termination or expiration of this Contract, survives any such termination or expiration hereof.

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

9.   Fees and Expenses.

9.1   Fees. Subject to the terms and conditions of this Contract, the applicable Statement of Work, and the Service Level Agreement, the State shall pay the fees set forth in the applicable Statement of Work, subject to such increases and adjustments as may be permitted pursuant to **Section 9.2** ("**Fees**").

9.2   Fees during Option Years. Contractor's Fees are fixed during the initial period of the Term. Contractor may increase Fees for any renewal period by providing written notice to the State at least sixty (60) calendar days prior to the commencement of such renewal period. An increase of Fees for any

renewal period may not exceed three percent (3%) of the Fees effective during the immediately preceding twelve (12) month period. No increase in Fees is effective unless made in compliance with the provisions of this **Section 9.2**.

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

9.4   Taxes. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Contract are for the State's exclusive use. All Fees 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.

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

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

(b)   list each Fee item separately;

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

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

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

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

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

electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment.

    9.7   <u>State Audits of Contractor</u>.

    (a)   During the Term, and for four (4) years after, Contractor must maintain complete and accurate books and records regarding its business operations relevant to the calculation of Fees and any other information relevant to Contractor's compliance with this **Section 9**. During the Term, and for four (4) years after, upon the State's request, Contractor must make such books and records and appropriate personnel, including all financial information, available during normal business hours for inspection and audit by the State or its authorized representative, provided that the State: (a) provides Contractor with at least fifteen (15) days prior notice of any audit, and (b) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Contractor's normal business operations.

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

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

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

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

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

    (i)   the amount in dispute; and

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

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

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

Contractor shall not withhold or delay any Hosted Services or Support Services or fail to perform any other Services or obligations hereunder by reason of the State's good faith withholding of any payment or amount in accordance with this **Section 9.9** or any dispute arising therefrom

9.10 Availability and Support Service Level Credits. Contractor acknowledges and agrees that any credits assessed under the Service Level Agreement: (a) is a reasonable estimate of and compensation for the anticipated or actual harm to the State that may arise from not meeting the Availability Requirement or the Support Service Level Requirement, which would be impossible or very difficult to accurately estimate; and (b) may, at the State's option, be credited or set off against any Fees or other charges payable to Contractor under this Contract or be payable to the State upon demand. Credits may not exceed the total amount of Fees that would be payable for the relevant service period in which the credits are assessed.

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

10. State Data.

10.1 Ownership. The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) User Data; and (b) the State's data collected, used, processed, stored, or generated in connection with the Services, including but not limited to (i) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Services, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and (ii) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Services, which is defined under the Health Insurance Portability and Accountability Act ("**HIPAA**") and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This **Section 10.1** survives termination or expiration of this Contract.

10.2 Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Services. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract, applicable State PSP's, and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the

benefit of anyone other than the State without the State's prior written consent. This **Section 10.2** survives termination or expiration of this Contract.

10.3 Backup and Extraction of State Data. Contractor will conduct, or cause to be conducted periodic back-ups of State Data at a frequency that will ensure the RPO requirements set forth in **Section 14(a)** of this Contract. All backed up State Data shall be located in the continental United States. 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 State Data in the format specified by the State.

10.4 Discovery. Contractor shall immediately notify the State upon receipt of any requests which in any way might reasonably require access to State Data or the State's use of the Hosted Services. Contractor shall notify the State Project Manager by the fastest means available and also in writing. In no event shall Contractor provide such notification more than twenty-four (24) hours after Contractor receives the request. Contractor shall not respond to subpoenas, service of process, FOIA requests, and other legal requests related to the State without first notifying the State and obtaining the State's prior approval of Contractor's proposed responses. Contractor agrees to provide its completed responses to the State with adequate time for State review, revision and approval.

10.5 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 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

18

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 10.5** are to be considered direct damages and not consequential damages. This section survives termination or expiration of this Contract.

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

11. Accessibility Requirements.
11.1   All Software provided by Contractor under this Contract, including associated content and documentation, must conform to WCAG 2.0 Level AA. Contractor must provide a description of conformance with WCAG 2.0 Level AA specifications by providing a completed PAT for each product provided under the Contract. At a minimum, Contractor must comply with the WCAG 2.0 Level AA conformance claims it made to the State, including the level of conformance provided in any PAT. Throughout the Term of the Contract, Contractor must:
(a)   maintain compliance with WCAG 2.0 Level AA and meet or exceed the level of conformance provided in its written materials, including the level of conformance provided in each PAT;
(b)   comply with plans and timelines approved by the State to achieve conformance in the event of any deficiencies;

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

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

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

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

11.2   State of Michigan Digital Standards Review. Contractor must assist the State, at no additional cost, with development, completion, and on-going maintenance of an accessibility plan, which requires Contractor, upon request from the State, to submit evidence to the State to validate Contractor's accessibility and compliance with WCAG 2.0 Level AA. Prior to the solution going-live and thereafter on an annual basis, or as otherwise required by the State, re-assessment of accessibility may be required. At no additional cost, Contractor must remediate all issues identified from any assessment of accessibility pursuant to plans and timelines that are approved in writing by the State.

11.3   Warranty. Contractor warrants that all WCAG 2.0 Level AA conformance claims made by Contractor pursuant to this Contract, including all information provided in any PAT Contractor provides to the State, are true and correct. If the State determines such conformance claims provided by the Contractor represent a higher level of conformance than what is actually provided to the State, Contractor will, at its sole cost and expense, promptly remediate its Software to align with Contractor's stated WCAG 2.0 Level AA conformance claims in accordance with plans and timelines that are approved in writing by the State. If Contractor is unable to resolve such issues in a manner acceptable to the State, in addition to all other remedies available to the State, the State may terminate this Contract for cause under **Section 7.1**.

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

11.5   Failure to comply with the requirements in this **Section 11** shall constitute a material breach of this Contract.

12. Confidentiality.

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

12.2 Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to the Contractor's subcontractor is permissible where: (a) the subcontractor is a Permitted Subcontractor; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Permitted Subcontractor's responsibilities; and (c) Contractor obligates the Permitted Subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any of the Contractor's Representatives may be required to execute a separate agreement to be bound by the provisions of this **Section 12.2**.

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

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

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

13. 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**.

14. Disaster Recovery and Backup. Throughout the Term and at all times in connection with its actual or required performance of the Services, Contractor will:

(a)   maintain and operate a backup and disaster recovery plan to achieve a Recovery Point Objective (RPO) of 24 hours, and a Recovery Time Objective (RTO) of 24 hours (the "**DR Plan**"), and implement such DR Plan in the event of any unplanned interruption of the Hosted Services. Contractor's current DR Plan, revision history, and any reports or summaries relating to past testing of or pursuant to the DR Plan are attached as **Schedule E**. Contractor will actively test, review and update the DR Plan on at least an annual basis using industry best practices as guidance. Contractor will provide the State with copies of all such updates to the Plan within fifteen (15) days of its adoption by Contractor. All updates to the DR Plan are subject to the requirements of this **Section 14**; and

(b)   provide the State with copies of all reports resulting from any testing of or pursuant to the DR Plan promptly after Contractor's receipt or preparation. If Contractor fails to reinstate all material Hosted Services within the periods of time set forth in the DR Plan, the State may, in addition to any other remedies available under this Contract, in its sole discretion, immediately terminate this Contract as a non-curable default under **Section 7.1(a)**.

15. Indemnification.

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

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

(b)   any negligence or more culpable act or omission (including recklessness or willful misconduct) in connection with the performance or nonperformance of any Services or other activity actually or required to be performed by or on behalf of, Contractor (including, in the case of Contractor, any Contractor Personnel) under this Contract, provided that, to the extent that any Action or Losses described in this **Section 15.1** arises out of, results from, or alleges a claim that any of the Services does or threatens to infringe, misappropriate or otherwise violate any Intellectual Property Rights or other rights of any third party, Contractor's obligations with respect to such Action and Losses, if any, shall be subject to the terms and conditions of **Section 15.2(a)** through **Section 15.3(b)** and **Section 15.3**.

15.2 Infringement Indemnification By Contractor. Contractor must indemnify, defend and hold the State, and the State's agencies, departments, officers, directors, employees, agents, and contractors harmless from and against all Losses arising out of or resulting from any Action that does or is alleged to arise out of or result from a claim that any of the Services, or the State's or any Authorized User's use

thereof, actually does or threatens to infringe, misappropriate or otherwise violate any Intellectual Property Right or other right of a third party, provided however, that Contractor shall have no liability or obligation for any Action or Loss to the extent that such Action or Loss arises out of or results from any:

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

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

15.3 Mitigation.

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

(b)   Subject to the exclusions set forth in clauses (a) and (b) of **Section 15.2**, if any of the Services or any component or feature thereof is ruled to infringe or otherwise violate the rights of any third party by any court of competent jurisdiction, or if any use of any Services or any component thereof is threatened to be enjoined, or is likely to be enjoined or otherwise the subject of an infringement or misappropriation claim, Contractor must, at Contractor's sole cost and expense:

(i)   procure for the State the right to continue to access and use the Services to the full extent contemplated by this Contract and the Specifications; or

(ii)   modify or replace all components, features and operations of the Services that infringe or are alleged to infringe ("**Allegedly Infringing Features**") to make the Services non-infringing while providing equally or more suitable features and

functionality, which modified and replacement services shall constitute Services and be subject to the terms and conditions of this Contract.

(c)   If neither of the remedies set forth in **Section 15.3(b)** is reasonably available with respect to the Allegedly Infringing Features then Contractor may direct the State to cease any use of any materials that have been enjoined or finally adjudicated as infringing, provided that Contractor will:

(i)   refund to the State any prepaid Fees for Services that have not been provided; and

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

(d)   The remedies set forth in this **Section 15.3** are in addition to, and not in lieu of, all other remedies that may be available to the State under this Contract or otherwise, including the State's right to be indemnified pursuant to **Section 15.1** and **Section 15.2**.

15.4 Indemnification Procedure. The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations. The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense, at its own expense, if the State deems necessary. Contractor will not, without the State's prior written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. Any litigation activity on behalf of the State or any of its subdivisions, under this **Section 15**, 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.

16. Limitations of Liability.

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

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

17. Contractor Representations and Warranties.

17.1 <u>Authority and Bid Response</u>. Contractor represents and warrants to the State that:

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

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

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

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

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

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

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

(h) 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.

17.2 <u>Software and Service Warranties</u>. Contractor represents and warrants to the State that:

(a) Contractor has, and throughout the Term and any additional periods during which Contractor does or is required to perform the Services will have, the unconditional and irrevocable right, power and authority, including all permits and licenses required, to provide the Services and grant and perform all rights and licenses granted or required to be granted by it under this Contract;

(b)   neither Contractor's grant of the rights or licenses hereunder nor its performance of any Services or other obligations under this Contract does or at any time will: (i) conflict with or violate any applicable Law, including any Law relating to data privacy, data security or personal information; (ii) require the consent, approval or authorization of any governmental or regulatory authority or other third party; or (iii) require the provision of any payment or other consideration by the State or any Authorized User to any third party, and Contractor shall promptly notify the State in writing if it becomes aware of any change in any applicable Law that would preclude Contractor's performance of its material obligations hereunder;

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

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

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

(f)   all Specifications are, and will be continually updated and maintained so that they continue to be, current, complete and accurate and so that they do and will continue to fully describe the Hosted Services in all material respects such that at no time during the Term or any additional periods during which Contractor does or is required to perform the Services will the Hosted Services have any material undocumented feature;

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

(h)   Contractor will not advertise through the Hosted Services (whether with adware, banners, buttons or other forms of online advertising) or link to external web sites that are not approved in writing by the State;

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

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

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

17.3 DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES IN THIS CONTRACT, CONTRACTOR HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE UNDER OR IN CONNECTION WITH THIS CONTRACT OR ANY SUBJECT MATTER HEREOF.

18. Insurance.

18.1 Required Coverage.

(a)   **Insurance Requirements.** Contractor, at its sole expense, must maintain the insurance coverage identified below. All required insurance must: (i) protect the State from claims that arise out of, are alleged to arise out of, or otherwise result from Contractor's or subcontractor's performance; (ii) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (iii) be provided by a company with an A.M. Best rating of "A-" or better, and a financial size of VII or better.

Insurance Type	Additional Requirements
Commercial General Liability Insurance	
Minimal Limits: $1,000,000 Each Occurrence	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies,

$1,000,000 Personal & Advertising Injury $2,000,000 General Aggregate $2,000,000 Products/Completed Operations	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	
If a motor vehicle is used in the performance of the Contract, Contractor must maintain motor vehicle liability coverage for bodily injury and property damage, as required by law, for the term of the Contract.	
Employer's Liability Insurance	
<u>Minimal Limits:</u> $500,000 Each Accident $500,000 Each Employee by Disease $500,000 Aggregate Disease.	
Privacy and Security Liability (Cyber Liability) Insurance	
<u>Minimal Limits:</u> $1,000,000 Each Occurrence $1,000,000 Annual Aggregate	Contractor must have their policy cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.

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

(c)   Contractor must: (i) 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; (ii) require that subcontractors maintain the required insurances contained in this Section; (iii) notify the Contract Administrator within five (5) business days if

any policy is cancelled; and (iv) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

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

19. Force Majeure.

19.1 Force Majeure Events. Subject to **Section 19.2**, neither party will be liable or responsible to the other party, or be deemed to have defaulted under or breached this Contract, for any failure or delay in fulfilling or performing any term hereof, when and to the extent such failure or delay is caused by: acts of God, flood, fire or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Contract, national or regional emergency, or any passage of law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition (each of the foregoing, a "**Force Majeure Event**"), in each case provided that: (a) such event is outside the reasonable control of the affected party; (b) the affected party gives prompt written notice to the other party, stating the period of time the occurrence is expected to continue; (c) the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

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

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

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

(i) shutdowns, disruptions or malfunctions of the Contractor Systems or any of Contractor's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to the Contractor Systems; or

(ii) the delay or failure of any Contractor Personnel to perform any obligation of Contractor hereunder unless such delay or failure to perform is itself by reason of a Force Majeure Event; and

(b)   no Force Majeure Event modifies or excuses Contractor's obligations under **Section 4** (Service Availability and Service Availability Credits), **Section 5.5** (Support Service Level Credits), **Section 10** (State Data), **Section 12** (Confidentiality), **Section 13** (Security), **Section 14** (Disaster Recovery) or **Section 15** (Indemnification), or any Availability Requirement or Support Service Level Requirement.

20. Software Escrow. The parties may enter into a separate intellectual property escrow agreement. Such escrow agreement will govern all aspects of Source Code escrow and release.

21. Effect of Contractor Bankruptcy. All rights and licenses granted by Contractor under this Contract are and shall be deemed to be rights and licenses to "intellectual property," and the subject matter of this agreement, including the Services, is and shall be deemed to be "embodiments" of "intellectual property" for purposes of and as such terms are used in and interpreted under section 365(n) of the United States Bankruptcy Code (the "**Code**") (11 U.S.C. § 365(n) (2010)). The State has the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Contract (including all executory Statement of Works). Without limiting the generality of the foregoing, if Contractor or its estate becomes subject to any bankruptcy or similar proceeding, subject to the State's rights of election, all rights and licenses granted to the State under this Contract will continue subject to the respective terms and conditions of this Contract, and will not be affected, even by Contractor's rejection of this Contract.

22. General Provisions.

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

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

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

22.4 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder, other than routine communications having no legal effect, must be in writing and addressed to the parties as follows (or as otherwise specified by a party in a notice given in accordance with this Section):

If to Contractor:

7322 Newman Blvd Bldg. 2 Suite 100

Dexter MI 48130

E-mail: corporate@ciminc.com

Attention: Douglas Zimmer

Title: President

If to the State:

525 W. Allegan Street, Lansing, MI 48913

E-mail: MayJ7@michigan.gov

Attention: Jennifer May

Title: Category Analyst, IT

Notices sent in accordance with this **Section 22.4** will be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail (with confirmation of transmission), if sent during normal business hours of the recipient, and on the next business day, if sent after normal business hours of the recipient; or (d) on the fifth (5th) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

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

22.6 Assignment. Contractor may not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Contract, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the State's prior written consent. The State has the right to terminate this Contract in its entirety or any Services or Statements of Work hereunder, pursuant to **Section 7.2**, if Contractor delegates or otherwise transfers any of its obligations or performance hereunder, whether voluntarily, involuntarily, by operation of law or otherwise, and no such delegation or other transfer will relieve Contractor of any of such obligations or performance. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Contractor (regardless of whether Contractor is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Contract for which the State's prior written consent is required. Any purported assignment, delegation, or transfer in violation of this **Section 22.6** is void.

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

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

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

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

22.11 Equitable Relief. Each party to this Contract acknowledges and agrees that (a) a breach or threatened breach by such party of any of its obligations under this Contract would give rise to irreparable harm to the other party for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by such party of any such obligations, the other party hereto is, in addition to any and all other rights and remedies that may be available to such party at law, at equity or otherwise in respect of such breach, entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy. Each party to this Contract agrees that such party will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this **Section 22.11**.

22.12 Nondiscrimination. Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and Executive

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

22.13   Unfair Labor Practice. Under 1980 PA 278, MCL 423.321, *et seq.*, the State must not award a contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. This information is compiled by the United States National Labor Relations Board. A contractor of the State, in relation to the contract, must not enter into a contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, the State may void any contract if, after award of the contract, the contractor as an employer or the name of the subcontractor, manufacturer or supplier of the contractor appears in the register.

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

Schedule A	**Statement of Work**
Schedule B	**Pricing**
Schedule C	**Service Level Agreement**
Schedule D	**Data Security Requirements**
Schedule E	**Disaster Recovery Plan**
Schedule F	**Federal Provisions Addendum**

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

22.16   Administrative Fee and Reporting. Contractor must pay an administrative fee of 1% on all payments made to Contractor under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions), MiDEAL members, and other states

(including governmental subdivisions and authorized entities). Administrative fee payments must be made online by check or credit card:

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

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

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

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

22.17   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.

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

SCHEDULE A

STATEMENT OF WORK

This schedule identifies the anticipated requirements of this Contract.

1. DEFINITIONS

The following terms have the meanings set forth below. All initial capitalized terms that are not defined below shall have the respective meanings given to them in Section 1 of the Contract Terms and Conditions.

Term	Definition
AES	Advanced Encryption Standard
CFR	The Code of Federal Regulations
CHAMPS	The Community Health Automated Medicaid Processing System
CMS	The Centers for Medicare & Medicaid Services
DTMB	Department of Technology, Management, and Budget
FedRAMP	The Federal Risk and Authorization Management Program
FIPS	Federal Information Processing Standard
FISMA	Federal Information Security Management Act of 2002
HIPAA	The Health Insurance Portability and Accountability Act of 1996
IT	Information Technology
LOCD	Level of Care Determination
MDHHS	Michigan Department of Health and Human Services
MI	Michigan
NFT	Nursing Facility Transition
NIST	The National Institute of Standards and Technology

SOM	State of Michigan
SSA	The United States Social Security Administration

2. BACKGROUND

The focus of the contract is to provide funding to CIM so that designated MDHHS staff will have access to CIM's privatized information systems which store data owned and managed by local Waiver Agents who are customers of CIM's MICIS Service Bureau and are also contractors with MDHHS for several program areas in order to utilize features and functions in the CIM suite of applications, including Compass and other functional components, as well as special reports developed specifically for MDHHS users. The data managed in the MSB suite includes waiting list, assessment, services, client, and quality information for the MI Choice and Nursing Facility Transition programs. This contract also provides funding for the maintenance and support of three custom Critical Incident (CI) applications developed with funding from MDHHS which operate outside of the MSB application suite and are used by State and local users in the MI Health Link, MI Choice, and the Nursing Facility transition programs.

MDHHS will be provided with user accounts to access all Waiver Agent data managed in the MSB applications with very limited privileges to enter and edit data, limited to data related to Nursing Facility Transitions and Diversions. The MSB applications and data contained in the applications are NOT state-owned and provisions in this contract related to State-owned are explicitly excluded from applying to this data.

MDHHS will also be provided with three (3) program-specific separate applications, totally separated from Waiver Agent data operations, to enter details about and report on certain critical incidents that occur in the lives of program participants. Specifically, these programs are MI Health Link program, MI Choice, and the Nursing Facility Transition programs. These freestanding applications do store State-owned data so that certain provisions in this contract related to State-owned will only apply to this data.

3. PURPOSE

The State is requiring a Contractor hosted Software solution and applicable Services

- Specific business goals to achieve: 1) Have MI Choice, Nursing Facility Transition, Clearinghouse, MI Choice waiting list, and Critical incident data available to MDHHS and contracted entities. 2) Transfer MI Choice and MI Choice waiting list data to the Data Warehouse weekly. 3) Provide access to reports including enrollment reports, quality indicators, waiting list, assessments, contact notes, and other data needed to assist with the compilation of the CMS 372 Report. 4) Update and maintain NFT portal for approval of individuals receiving transition services and prior authorization of those services. 5) Update and maintain critical incident data base for MI Choice, MI Health Link, and Nursing facility Transition programs. 6) Update and maintain case review features and access to assist MDHHS and contractors in clinical quality reviews 7) Update, maintain, and support Clearinghouse feature for non-MSB customers to submit data for inclusion in the Data Warehouse 8) Update and maintain algorithm, software features and reports for significant support participants (SSP) 9) Process, update, and maintain Institute of Gerontology export files required by State's interRAI agreement 10) Provide support to MDHHS staff in monitoring/discovery of issues in MDHHS systems that impact capitation payments
- Known business processes, programs or functions impacted: Compilation of the annual CMS 372 Report for MI Choice, monitoring of mandated critical incident reports for MI Choice, NFT and MI Health Link, monitoring of MI Choice slots and budget, monitoring of MI Choice capitation payments, evaluation of quality improvement initiatives, evaluation of MI Choice waiting list data,

operation and monitoring of the Nursing Facility Transition program, and LOCD passive redetermination.
- Necessary workflows and/or business processes to be created: None, if contract is maintained.
- Known business or IT projects impacted: Data Warehouse updates, LOCD, Waiting List, Nursing Facility Transition services, MI Choice, MI Health Link.
- Known IT systems impacted: Data Warehouse, LOCD, CHAMPS
- Federal, state or other regulations that impact the system: 42 CFR §§430, 431, 438, 455. §§1915 (b), (c), and (i) of SSA. Medicaid Provider Manual, Social Welfare Act

4. SPECIFIC STANDARDS

IT Policies, Standards and Procedures (PSP)
Contractors are advised that the State has methods, policies, standards and procedures that have been developed over the years. Contractors are expected to provide proposals that conform to State IT policies and standards. All services and products provided as a result of this must comply with all applicable State IT policies and standards.

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

ADA Compliance
The State is required to comply with the Americans with Disabilities Act of 1990 (ADA) and has adopted standards and procedures regarding accessibility requirements for websites and software applications. All websites, applications, software, and associated content and documentation provided by the Contractor as part of the Solution must comply with Level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.0.

Contractor must provide a description of conformance with WCAG 2.0 Level AA specifications by providing a completed PAT for the Solution. If the Solution is comprised of multiple products, a PAT must be provided for each product. In addition to PATs, Contractors may include a verification of conformance certified by an industry-recognized third-party. If the Contractor is including any third-party products in the Solution, Contractor must obtain and provide the third-party PATs as well.

Each PAT must state exactly how the product meets the specifications. All "Not Applicable" (N/A) responses must be fully explained. Contractor must address each standard individually and with specificity; and clarify whether conformance is achieved throughout the entire product (for example – user functionality, administrator functionality, and reporting), or only in limited areas. 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. 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.

5. USER TYPE AND CAPACITY

Type of User	Access Type	Number of Users	Number of Concurrent Users
State Employee	Read, Write, Administrative	30	10
Trusted Third Party	Read, Write	1400	500

Contractor Solution must meet the expected number of concurrent Users.

6. ACCESS CONTROL AND AUTHENTICATION

The Contractor's solution must integrate with the State's IT Identity and Access Management (IAM) environment as described in the State of Michigan Digital Strategy (http://www.michigan.gov/dtmb/0,5552,7-150-56345_56351_69611-336646--,00.html), which consist of:

6.1 MILogin/Michigan Identity, Credential, and Access Management (MICAM). An enterprise single sign-on and identity management solution based on IBM's Identity and Access Management products including, IBM Security Identity Manager (ISIM), IBM Security Access Manager for Web (ISAM), IBM Tivoli Federated Identity Manager (TFIM), IBM Security Access Manager for Mobile (ISAMM), and IBM DataPower, which enables the State to establish, manage, and authenticate user identities for the State's Information Technology (IT) systems.

6.2 MILogin Identity Federation. Allows federated single sign-on (SSO) for business partners, as well as citizen-based applications.

6.3 MILogin Multi Factor Authentication (MFA, based on system data classification requirements). Required for those applications where data classification is Confidential and Restricted as defined by the 1340.00 Michigan Information Technology Information Security Policy (i.e. the proposed solution must comply with PHI, PCI, CJIS, IRS,CMS, and other standards).

6.4 MILogin Identity Proofing Services (based on system data classification requirements). A system that verifies individual's identities before the State allows access to its IT system. This service is based on "life history" or transaction information aggregated from public and proprietary data sources. A leading credit bureau provides this service.

6.5 To integrate with the SOM MILogin solution, the Contractor's solution must support SAML, or OAuth or OpenID interfaces for the SSO purposes.

7. DATA RETENTION

Contractor must meet the State's data retention requirement of 10 years.

8. END USER OPERATING ENVIRONMENT

Contractor must accommodate the latest browser versions 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 www.michigan.gov/browserstats. Please use the most recent calendar quarter to determine browser statistics. For those browsers with over 2% of site traffic, the current browser version as well as the previous two major versions must be supported.

9. SOFTWARE

Software requirements are identified in **Schedule A – Table 1 Business Specification Worksheet.**

The database may be increased at the time of transition, if required by the State.

10. TRAINING SERVICES

The Contractor must provide administration and end-user training for implementation, go-live support, and transition to customer self-sufficiency.

11. TRANSITION SERVICES

Upon termination or expiration of the agreement, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the agreement to continue without interruption or adverse effect, and to facilitate the orderly transfer of the services to the State or its designees. Such transition assistance may include but is not limited to: (a) continuing to perform the services at the established rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable services to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return (in a format specified by the State) to the State all data stored in the solution within 7 days; and (d) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

12. DOCUMENTATION

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

Contractor must develop and submit for State approval complete, accurate, and timely Solution documentation to support all users, and will update any discrepancies, or errors through the life of the contract.

The Contractor's user documentation must provide detailed information about all software features and functionality, enabling the State to resolve common questions and issues prior to initiating formal support requests.

13. CONTRACTOR PERSONNEL

    Contractor Contract Administrator. Contractor resource who is responsible to(a) administer the terms of this Contract, and (b) approve and execute any Change Notices under this Contract.

Contractor Center for Information Management, Inc.
Name Douglas Zimmer **Address** 7322 Newman Blvd Bldg 2 Suite 100 **Dexter** MI 48130 **Phone** (734) 930-0855 **Email** corporate@ciminc.com

14. CONTRACTOR KEY PERSONNEL

Contractor Project Manager. Contractor resource who is responsible to serve as the primary contact with regard to services who will have the authority to act on behalf of the Contractor in matters pertaining to the implementation services, matters pertaining to the receipt and processing of Support Requests and the Support Services.

Contractor Center for Information Management, Inc.
Name Melissa Owen
Address 7322 Newman Blvd Bldg 2 Suite 100 Dexter MI 48130
Phone (734) 930-0855
Email melissa@ciminc.com

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

Contractor Center for Information Management, Inc.
Name Benjamin Erridge
Address 7322 Newman Blvd Bldg 2 Suite 100 Dexter MI 48130
Phone (734) 930-0855
Email ben@ciminc.com

15. CONTRACTOR PERSONNEL REQUIREMENTS

Background Checks. Contractor must present certifications evidencing satisfactory Michigan State Police Background checks ICHAT and drug tests for all key personnel identified to this project.

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

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

16. STATE RESOURCES/RESPONSIBILITIES

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

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

State Contract Administrator
Name Jennifer May
Phone 517-242-6664
Email mayj7@michigan.gov

Program Managers. The DTMB and Agency Program Managers will jointly approve all Deliverables and day to day activities.

DTMB Program Manager
Name John Moore
Phone 517-331-5065
Email moorej7@michigan.gov

Agency Program Manager
Name Elizabeth Gallagher
Phone 517-335-5068
Email gallaghere@michigan.gov

17. MEETINGS

The Contractor must attend the following meetings, at a location and time as identified by the state, at no additional cost to the State:

- At least quarterly meetings to cover issues with the solution, updates on progress toward completion of improvements, discussion of other changes recommended by users. Location, date, and time will be mutually agreed upon.

18. PROJECT CONTROL & REPORTS

The Contractor Project Manager must monitor project progress and report on a monthly basis to the State's Project Manager the following:

- Accomplishments during the reporting period, what was worked on and what was completed during the current reporting period
- Indicate the number of hours expended during the past month, by resource as well as total and the cumulative total to date for the project. Also, state whether the remaining hours are sufficient to complete the tasks.
- Tasks planned for the next reporting period
- Identify any existing issues which are impacting the project and the steps being taken to address those issues
- Identify any new risks and describe progress in mitigating high impact/high probability risks previously identified
- Indicate the amount of funds expended during the current reporting period, and the cumulative total to date for the project.
- Indicate hosting costs for the reporting period as a separate line item

19. ADDITONAL INFORMATION

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

SCHEDULE A

TABLE 1 - Business Specification Worksheet

Instructions for Completing the Business Specifications Worksheet

Contractor must meet each business Specification on how they will meet the requirements in the document provided. Contractor must not alter the document.

The Business Specifications Worksheet contains columns and is defined as follows:

Column A: Business Specification number.
>   **NOTE:**
> - The "**Required**" section of the Business Specifications Worksheet lists items that the State requires to be part of the Solution. "Required" items will be evaluated and scored upon per the State evaluation process.
> - The "**Optional**" section of the Business Specifications Worksheet lists items that are not required at the time of the solicitation but may be desired by the State in the future. Such "Optional" items will be evaluated and used in a best value award recommendation

Column B: Business Specification description.

Column C: Bidder must indicate how it will comply with the business Specification. Bidder must enter **"Y"** to one of the following:

- **Current Capability –** This capability is available in the proposed system with no additional configuration or cost
- **Requires Configuration –** This capability can be met through Contractor-supported changes to existing settings and application options as part of the initial implementation at no additional cost (e.g., setting naming conventions, creating user-defined fields).
- **Future Enhancement –** This capability is a planned enhancement to the base software and will be available within the next 12 months of contract execution at no additional cost.
- **Not Available –** This capability is not currently available, and a future enhancement is not planned.

NOTE: Configuration is referred to as a change to the Solution that must be completed by the Contractor prior to Go-Live but allows an IT or non-IT end user to maintain or modify thereafter (i.e. no source code or structural data model changes occurring).

Customization is referred to a modification to the Solution's underlying source code, which can be completed as part of the initial implementation. All configuration changes or customization modifications made during the term of the awarded contract must be forward-compatible with future releases and be fully supported by the Contractor without additional costs.

Column D: The Contractor must also fully disclose how they will meet the requirements in their proposal response. This column is for Contractor to describe how they will deliver the business Specification and if the Contractor proposes configurations, the Contractor must explain the details of the impacted risk that may be caused if configured to meet the business Specification. Description must be no more than 250 words for each business Specification.

A	B	C				D
Business Specification Number	Business Specification	Current Capability	Requires Configuration	Future Enhancement	Not Available	Contractor must state how they will deliver the business Specification.
REQUIRED						
1.0	Solution must comply with HIPAA requirements.	x				
2.0	Solution must comply with IT security requirements.	x				
3.0	Solution must integrate system data into the data warehouse and maintain system for submission of data from non-MSB customers.	x		x		Nursing Facility Transition data is not in the data warehouse currently; MI Choice and Waiting List data are sent to the data warehouse weekly
4.0	Solution must give Web-based access for State and contracted users.	x				
5.0	Solution must allow for real-time entry and access of nursing facility transition, waiting list, and critical incident data by all authorized users.	x				
6.0	Solution must allow authorized users to view client data in real time.	x				
7.0	Contractor must maintain system for identifying a client across contractors so that there is only one case file per person	x				
8.0	Contractor must update system as needed to conform to new or changed laws, rules, or regulations.		x			

#	Requirement					Comments
9.0	Solution must include current program enrollment or participation for each individual including start and stop dates.	x				
10.0	Data Warehouse files must not include concurrent enrollments or overlapping enrollment dates as specified in program policy and other data integrity measures to ensure accuracy.	x				
11.0	Solution must assure that users conform to clinical standards for modifying medical or clinical records.			x		Records are locked in the system, but users can unlock records to make minimum changes; all records are audited with availability to see those audits in the system. Need clarification on what clinical standards to meet in regard to this statement as we are unaware of any medical/clinical standards beyond privacy and security standards.
OPTIONAL						
12.0	Solution should allow for methods for obtaining electronic signatures for required documents.			x		This is obtained by tracking user who submitted records or finalized records. However, electronic signatures do not extend to reports for participants, such as the Transition Plan report
13.0	Solution should integrate with Health Information Systems to update client records.		x			
14.0	Solution should integrate with Electronic Visit Verification data.			x		No specifications yet from State as to how this will function or need to be integrated
15.0	Solution should include electronic billing.	x				Electronic billing is available in our MSB Suite, but is not a requirement nor planned enhancement for Nursing Facility Transition services

SCHEDULE B

PRICING

Price proposals must include <u>all</u> costs for the implementation, licensing, and ongoing support of the Solution. Contractor should generate a pricing schedule as follows:

<u>Licensing</u>. If Contractor is proposing a perpetual license, Contractor shall include the one-time cost of the license, which shall cover all intended users of the Solution (please refer to the estimated number and type of users identified in the **User Type and Capacity Section of Schedule A - Statement of Work**). If Contractor is proposing a term-based license, Contractor shall include annual costs for the term-based license for , which shall cover all intended users of the Solution (please refer to the estimated number and type of users identified in the **User Type and Capacity Section of Schedule A - Statement of Work**). While the State is looking for precise pricing based on the estimated number of users, Contractor is encouraged to also provide a separate, tiered pricing structure to afford the State discounted pricing based on potential increases in volume in the future. If Contractor offers an enterprise pricing model (e.g. unlimited number of users), it is encouraged to separately provide that pricing option as well.

<u>Support and Maintenance</u>. Contractor must include annual costs for ongoing support and maintenance of the System to meet the requirements of **Schedule C to the Contract Terms- Service Level Agreement**.

<u>Support Service Fees</u>. In consideration of the Service Level Agreement (if Contractor hosted), the State will pay to Contractor the Support Services fees (the "**Support Service Fees**") set forth in the Pricing Schedule, beginning on the Support Services Fees Commencement Date, subject to and in accordance with the terms and conditions of this Contract, including the applicable provisions of the Service Level Agreement (if Contractor hosted) and this **Section**..

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

1. Consolidated Pricing (with option year pricing)

Deliverable Products	Year 1 (10/1/2020- 9/30/2021)	Year 2 (10/1/2021- 9/30/2022)	Year 3 (10/1/2022 – 9/30/2023)	Three Year Totals
Critical Incident Systems (3):				
End User Technical Support	$18,000	$18,000	$18,000	$54,000
Software Evolution	$27,000	$27,000	$27,000	$81,000
Hosting w/ Compliance Work	$36,340	$22,040	$15,380	$73,760
MSB COMPASS:				
End User Technical Support	$84,000	$84,000	$84,000	$252,000
Software Evolution w/Compliance	$231,000	$333,300	$350,000	$914,300
Hosting w/ Compliance Work	$145,360	$88,160	$61,520	$295,040
Annual Total	$541,700	$572,500	$555,900	$1,670,100

Monthly Total	$45,100	$47,700	$46,300	
Compliance w/ IT Standards: Total (Included in Rates Above)	$151,700	$80,200	$46,900	
ADA	$28,500	$0	$0	
DAST/SAST/SCA	$21,900	$21,900	$21,900	
Infrastructure	$10,000	$10,000	$10,000	
FISMA/NIST	$91,300	$15,000	$15,000	
MiLOGIN	$0	$33,300	$0	

2. License Costs Detail

License Product	Detail	Price
NA		

Contractor should refer identify their software as perpetual license versus term-based license. The License Agreement should only include licensing terms and should not include any terms that conflict with the **CONTRACT TERMS** (e.g. payment terms).

3. Maintenance and Support Detail

Monthly Price		
Total Price		

4. Training

Training Deliverable	Price
NA	

Price proposals must include fixed-price fees for ongoing training beyond the initial Implementation Services. If Contractor offers remote web-based and onsite training, provide pricing for both.

5. Rate Card for Ancillary Professional Services.

Resource	On-Site Hourly Rate	On-Shore and Off-Site Hourly Rate	Off-Shore Hourly Rate
Business analyst		$120	
Full-stack developer		$150	
Database administrator		$150	
Technical analyst		$90	

Price proposals must include a fixed-price hourly-rate rate card for ancillary professional services (e.g. future enhancement configuration services) broken down by role (e.g. Solution design architect). If Contractor differentiates between on-site and remote services, provide pricing for both.

6. Open Source or Third Party Products

If Contractor is using any open source or third-party products in connection with the proposed Solution the Contractor must identify these separately in its proposal.

Product	Price
NA	

Travel and Expenses

The State does not pay for overtime or travel expenses.

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

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

"**Availability**" has the meaning set forth in **Section 4(a)**.

"**Availability Requirement**" has the meaning set forth in **Section 4(a)**.

"**Available**" has the meaning set forth in **Section 4(a)**.

"**Contractor Service Manager**" has the meaning set forth in **Section 3.1**.

"**Corrective Action Plan**" has the meaning set forth in **Section 5.6**.

"**Critical Service Error**" has the meaning set forth in **Section 5.4(a)**.

"**Exceptions**" has the meaning set forth in **Section 4.2**.

"**Force Majeure Event**" has the meaning set forth in **Section 6.1**.

"**High Service Error**" has the meaning set forth in **Section 5.4(a)**.

"**Hosted Services**" has the meaning set forth in **Section 2.1(a)**.

"**Low Service Error**" has the meaning set forth in **Section 5.4(a)**.

"**Medium Service Error**" has the meaning set forth in **Section 5.4(a)**.

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

"**Scheduled Downtime**" has the meaning set forth in **Section 4.3**.

"**Scheduled Uptime**" means the total minutes in the Service Period.

"**Service Availability Credits**" has the meaning set forth in **Section 4.6(a)**.

"**Service Error**" means any failure of any Hosted Service to be Available or otherwise perform in accordance with this Schedule.

"**Service Level Credits**" has the meaning set forth in **Section 5.5**.

"**Service Level Failure**" means a failure to perform the Software Support Services fully in compliance with the Support Service Level Requirements.

"**Service Period**" has the meaning set forth in **Section 4(a)**.

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

"**Software Support Services**" has the meaning set forth in **Section 5**.

"**State Service Manager**" has the meaning set forth in **Section 3.2**.

"**State Systems**" means the information technology infrastructure, including the computers, software, databases, electronic systems (including database management systems) and networks, of the State or any of its designees.

"**Support Request**" has the meaning set forth in **Section 5.4(a)**.

"**Support Service Level Requirements**" has the meaning set forth in **Section 5.4**.

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

2. **Services.**

2.1   Services. Throughout the Term, Contractor will, in accordance with all terms and conditions set forth in the Contract and this Schedule, provide to the State and its Authorized Users the following services:

(a)   the hosting, management and operation of the Software and other services for remote electronic access and use by the State and its Authorized Users ("**Hosted Services**");

(b)   the Software Support Services set forth in **Section 5** of this Schedule;

3. **Personnel**

3.1   Contractor Personnel for the Hosted Services. Contractor will appoint a Contractor employee to serve as a primary contact with respect to the Services who will have the authority to act on behalf of Contractor in matters pertaining to the receipt and processing of Support Requests and the Software Support Services (the "**Contractor Service Manager"). The Contractor Service Manager** will be considered Key Personnel under the Contract.

3.2   State Service Manager for the Hosted Services. The State will appoint and, in its reasonable discretion, replace, a State employee to serve as the primary contact with respect to the Services who will have the authority to act on behalf of the State in matters pertaining to the Software Support Services, including the submission and processing of Support Requests (the "**State Service Manager**").

4. **Service Availability and Service Availability Credits.**

(a)   Availability Requirement. Contractor will make the Hosted Services Available, as measured over the course of each calendar month during the Term and any additional periods during which Contractor does or is required to perform any Hosted Services (each such calendar month, a "**Service Period**"), at least 99.0% of the time, excluding only the time the Hosted Services are not Available solely as a result of one or more Exceptions (the "**Availability Requirement**"). "**Available**" means the Hosted Services are available and operable for access and use by the State and its Authorized Users over the Internet in material conformity with the Contract. "**Availability**" has a correlative meaning. The Hosted Services are not considered Available in the event of a material performance degradation or inoperability of the Hosted Services, in whole or in part. The Availability Requirement will be calculated for the Service Period as follows: (Actual Uptime – Total Minutes in Service Period Hosted Services are not Available Due to an Exception) ÷ (Scheduled Uptime – Total Minutes in Service Period Hosted Services are not Available Due to an Exception) x 100 = Availability.

4.2   Exceptions. No period of Hosted Service degradation or inoperability will be included in calculating Availability to the extent that such downtime or degradation is due to any of the following ("**Exceptions**"):

(a)   failures of the State's or its Authorized Users' internet connectivity;

(b)   Scheduled Downtime as set forth in **Section 4.3**.

4.3   Scheduled Downtime. Contractor must notify the State at least twenty-four (24) hours in advance of all scheduled outages of the Hosted Services in whole or in part ("**Scheduled Downtime**"). All such scheduled outages will: be scheduled between the hours of 5:00 p.m. and 5:00 a.m. on weekdays, Eastern Time; between the hours of 12:00a.m. and 11:59 p.m. on Saturdays and Sundays, Eastern time.

4.4   Software Response Time. Software response time, defined as the interval from the time the end user sends a transaction to the time a visual confirmation of transaction completion is received, must be less than two (2) seconds for 98% of all transactions. Unacceptable response times shall be considered to make the Software unavailable and will count against the Availability Requirement.

4.5   Service Availability Reports. Within thirty (30) days after the end of each Service Period, Contractor will provide to the State a report describing the Availability and other performance of the Hosted Services during that calendar month as compared to the Availability Requirement. The report must be in electronic or such other form as the State may approve in writing and shall include, at a minimum: (a) the actual performance of the Hosted Services relative to the Availability Requirement; and (b) if Hosted Service performance has failed in any respect to meet or exceed the Availability Requirement during the reporting period, a description in sufficient detail to inform the State of the cause of such failure and the corrective actions the Contractor has taken and will take to ensure that the Availability Requirement are fully met.

4.6   Remedies for Service Availability Failures.

(a)   If the actual Availability of the Hosted Services is less than the Availability Requirement for any Service Period, such failure will constitute a Service Error for which Contractor will issue to the State the following credits on the fees payable for Hosted Services provided during the Service Period ("**Service Availability Credits**"):

Availability	Credit of Fees
≥99.0%	None
<99.0% but ≥95.0%	15%
<95.0% but ≥90.0%	50%
<90.0%	100%

(b)   Any Service Availability Credits due under this **Section 4.6** will be applied in accordance with payment terms of the Contract.

(c)   If the actual Availability of the Hosted Services is less than the Availability Requirement in any two (2) of four (4) consecutive Service Periods, then, in addition to all other remedies available to the State, the State may terminate the Contract on written notice to Contractor with no liability, obligation or penalty to the State by reason of such termination.

5.   Support and Maintenance Services. Contractor will provide Hosted Service maintenance and support services (collectively, "**Software Support Services**") in accordance with the provisions of this **Section 5**. The Software Support Services are included in the Services, and Contractor may not assess any additional fees, costs or charges for such Software Support Services.

5.1   Support Service Responsibilities. Contractor will:

(a)   correct all Service Errors in accordance with the Support Service Level Requirements, including by providing defect repair, programming corrections and remedial programming;

(b)   provide unlimited telephone support 8 a.m. to 5 p.m. Eastern, Monday thru Friday;

(c)   provide unlimited online support 8 a.m. to 5 p.m. Eastern, Monday thru Friday ;

(d)   provide online access to technical support bulletins and other user support information and forums, to the full extent Contractor makes such resources available to its other customers; and

(e)   respond to and Resolve Support Requests as specified in this **Section 5.**

5.2   Service Monitoring and Management. Contractor will continuously monitor and manage the Hosted Services to optimize Availability that meets or exceeds the Availability Requirement. Such monitoring and management includes:

(a) proactively monitoring on a twenty-four (24) hour by seven (7) day basis all Hosted Service functions, servers, firewall and other components of Hosted Service security;

(b) if such monitoring identifies, or Contractor otherwise becomes aware of, any circumstance that is reasonably likely to threaten the Availability of the Hosted Service, taking all necessary and reasonable remedial measures to promptly eliminate such threat and ensure full Availability; and

(c) if Contractor receives knowledge that the Hosted Service or any Hosted Service function or component is not Available (including by written notice from the State pursuant to the procedures set forth herein):

    (i) confirming (or disconfirming) the outage by a direct check of the associated facility or facilities;

    (ii) if Contractor's facility check in accordance with clause (i) above confirms a Hosted Service outage in whole or in part: (A) notifying the State in writing pursuant to the procedures set forth herein that an outage has occurred, providing such details as may be available, including a Contractor trouble ticket number, if appropriate, and time of outage; and (B) working all problems causing and caused by the outage until they are Resolved as Critical Service Errors in accordance with the Support Request Classification set forth in **Section 5.4**, or, if determined to be an internet provider problem, open a trouble ticket with the internet provider; and

    (iii) notifying the State that Contractor has fully corrected the outage and any related problems, along with any pertinent findings or action taken to close the trouble ticket.

5.3   Service Maintenance. Contractor will continuously maintain the Hosted Services to optimize Availability that meets or exceeds the Availability Requirement. Such maintenance services include providing to the State and its Authorized Users:

(a) all updates, bug fixes, enhancements, new releases, new versions and other improvements to the Hosted Services, including the Software, that Contractor provides at no additional charge to its other similarly situated customers; and

(b) all such services and repairs as are required to maintain the Hosted Services or are ancillary, necessary or otherwise related to the State's or its Authorized Users' access to or use of the Hosted Services, so that the Hosted Services operate properly in accordance with the Contract and this Schedule.

5.4   Support Service Level Requirements. Contractor will correct all Service Errors and respond to and Resolve all Support Requests in accordance with the required times and other terms and conditions set forth in this **Section 5.4** ("**Support Service Level Requirements**"), and the Contract.

(a)   Support Requests. The State will classify its requests for Service Error corrections in accordance with the descriptions set forth in the chart below (each a "**Support Request**"). The State

Service Manager will notify Contractor of Support Requests by email, telephone or such other means as the parties may hereafter agree to in writing.

Support Request Classification	Description: **Any Service Error Comprising or Causing any of the Following Events or Effects**
Critical Service Error	• Issue affecting entire system or single critical production function; • Data integrity at risk;
High Service Error	• Primary component failure that materially impairs its performance; or • Data entry or access is materially impaired on a limited basis.
Medium Service Error	• Hosted Service is operating with minor issues that can be addressed with an acceptable (as determined by the State) temporary work around.
Low Service Error	• Request for assistance, information, or services that are routine in nature.

(b)   Response and Resolution Time Service Levels. Response and Resolution times will be measured from the time Contractor receives a Support Request until the respective times Contractor has (i) responded to, in the case of response time and (ii) Resolved such Support Request, in the case of Resolution time. "**Resolve**" (including "**Resolved**", "**Resolution**" and correlative capitalized terms) means that, as to any Service Error, Contractor has provided the State the corresponding Service Error correction and the State has confirmed such correction and its acceptance thereof. Contractor will respond to and Resolve all Service Errors within the following times based on the severity of the Service Error:

Support Request Classification	Service Level Metric (Required Response Time)	Service Level Metric (Required Resolution Time)	Service Level Credits (For Failure to Respond to any Support Request Within the Corresponding Response Time)	Service Level Credits (For Failure to Resolve any Support Request Within the Corresponding Required Resolution Time)
Critical Service Error	Four (4) hours	Eight (8) hours	Five percent (5%) of the Support Fees for the month in which the initial Service Level Failure begins and five percent (5%) of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error is not responded to within the required response time.	Five percent (5%) of the Support Fees for the month in which the initial Service Level Failure begins and five percent (5%) of such monthly Fees for the first additional hour or portion thereof that the corresponding Service Error remains un-Resolved, which amount will thereafter double for each additional one-hour increment.
High Service Error	Four (4) hours	Twelve (12) hours	Three percent (3%) of the Support Fees for the month in which the initial Service Level Failure begins and three percent (3%) of such monthly Fees for each additional hour or	Three percent (3%) of the Support Fees for the month in which the initial Service Level Failure begins and three percent (3%) of such monthly Fees for the first additional hour or

			portion thereof that the corresponding Service Error is not responded to within the required response time.	portion thereof that the corresponding Service Error remains un-Resolved, which amount will thereafter double for each additional one-hour increment.
Medium Service Error	One (1) Business Day	Two (2) Business Days	N/A	N/A
Low Service Error	One (1) Business Day	Five (5) Business Days	N/A	N/A

       (c)   <u>Escalation</u>. With respect to any Critical Service Error Support Request, until such Support Request is Resolved, Contractor will escalate that Support Request within four (4) hours of the receipt of such Support Request by the appropriate Contractor support personnel, including, as applicable, the Contractor Service Manager and Contractor's management or engineering personnel, as appropriate.

    5.5   <u>Support Service Level Credits</u>. Failure to achieve any of the Support Service Level Requirements for Critical and High Service Errors will constitute a Service Level Failure for which Contractor will issue to the State the corresponding service credits set forth in **Section 5.4(b)** ("**Service Level Credits**") in accordance with payment terms set forth in the Contract.

    5.6   <u>Corrective Action Plan</u>. If two or more Critical Service Errors occur in any thirty (30) day period during (a) the Term or (b) any additional periods during which Contractor does or is required to perform any Hosted Services, Contractor will promptly investigate the root causes of these Service Errors and provide to the State within five (5) Business Days of its receipt of notice of the second such Support Request an analysis of such root causes and a proposed written corrective action plan for the State's review, comment and approval, which, subject to and upon the State's written approval, shall be a part of, and by this reference is incorporated in, the Contract as the parties' corrective action plan (the "**Corrective Action Plan**"). The Corrective Action Plan must include, at a minimum: (a) Contractor's commitment to the State to devote the appropriate time, skilled personnel, systems support and equipment and other resources necessary to Resolve and prevent any further occurrences of the Service Errors giving rise to such Support Requests; (b) a strategy for developing any programming, software updates, fixes, patches, etc. necessary to remedy, and prevent any further occurrences of, such Service Errors; and (c) time frames for implementing the Corrective Action Plan. There will be no additional charge for Contractor's preparation or implementation of the Corrective Action Plan in the time frames and manner set forth therein.

6. Force Majeure.

6.1   Force Majeure Events. Subject to **Section 6.3**, neither party will be liable or responsible to the other party, or be deemed to have defaulted under or breached the Contract, for any failure or delay in fulfilling or performing any term hereof, when and to the extent such failure or delay is caused by: acts of God, flood, fire or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of the Contract, national or regional emergency, or any passage of law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition (each of the foregoing, a "**Force Majeure Event**"), in each case provided that: (a) such event is outside the reasonable control of the affected party; (b) the affected party gives prompt written notice to the other party, stating the period of time the occurrence is expected to continue; (c) the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

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

6.3   Exclusions; Non-suspended Obligations. Notwithstanding the foregoing or any other provisions of the Contract or this Schedule:

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

            (i)   shutdowns, disruptions or malfunctions of Contractor Systems or any of Contractor's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to the Contractor Systems; or

            (ii)   the delay or failure of any Contractor Personnel to perform any obligation of Contractor hereunder unless such delay or failure to perform is itself by reason of a Force Majeure Event.

DATA SECURITY REQUIREMENTS

The solution will be storing sensitive data in three program-specific Critical Incident Tracking and Reporting systems.

Contractor must comply with the following:
- Must remain compliant with the Health Insurance Portability and Accountability Act (HIPAA) Policies.
- Must provide its standard business associate agreement (BAA).
- For solutions hosted by subcontractors, other than physical colocation providers, contractor must provide a GovCloud Solution that is hosted in a FedRAMP authorized IT environment.
- Must be encrypted in transit and at rest using AES with 128 bit or higher keys and FIPS validated encryption modules.
- Must be encrypted in transit and at rest using currently validated encryption modules in accordance with FIPS PUB 140-2 (as amended), *Security Requirements for Cryptographic Modules.*
- Must implement NIST compliant multi-factor authentication for privileged/administrative and other identified access based on SOM PSP's and regulatory requirements of the system data.
- Must, unless otherwise mutually agreed, become and remain compliant within 180 days with FISMA and the NIST Special Publication 800-53 (most recent version) MOD controls using minimum control values as established in the applicable State PSP's.

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

"Anonymized' means the removal of all uniquely identifiable data related to a user, a user device, or a user location.

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

"**Contractor Systems**" means the hosting, management and operation of the information technology infrastructure, including all computing hardware, ancillary equipment, networking, Software, firmware, databases, data, other services (including support and subcontracted services), and related resources used by or for Contractor in connection with the Contract Services

"**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.).

"Hosting Provider" identifies third party subcontractor(s) that are providing any of the hosting services including management and operation of information technology infrastructure, computing hardware, ancillary equipment, networking, Software, firmware, databases, data, other services used to provide Contracted Systems; typically identified as a cloud provider(s).

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

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

"**PCI**" means the Payment Card Industry.

"**SSAE**" means Statement on Standards for Attestation Engagements.

2.   Contractor will appoint a Contractor employee to respond to the State's inquiries regarding the security of the Contractor Systems who has sufficient knowledge of the security of the Contractor Systems and the authority to act on behalf of Contractor in matters pertaining thereto ("**Contractor Security Officer**"). The Contractor Security Officer will be considered Key Personnel under the Contract.

3.   The SOM has established Information Technology (IT) PSP's to protect IT resources under the authority outlined in the overarching SOM 1305.00 Enterprise IT Policy. These PSP's contain controls and procedures based on federal regulations and industry standards the Sate implements to manage risk and maintain compliance in State IT environments. For contracted partners, this responsibility extends to all providers and subcontractors with an involvement in the contracted solution. These responsibilities also extend to controls and procedures. Responsibilities will vary depending on the services being provided to the State, the type of IT solution, and the applicable laws and regulations. Contracted partner responsibilities will only include the controls and processes that are applicable to the scope of the solution and services they and their subcontractors are providing. The State has implemented a security accreditation process that includes the development, completion and ongoing updates to a system security plan using the State's automated GRC platform. This process includes the verification of entity responsibilities for the security controls that are included as part of the accreditation process. The SOM also works with contracted partners to identify and validate other key controls which are not included directly in the GRC accreditation process. The goal of the State is to work with contracted partners to maintain compliance with State PSP's as well as applicable federal and industry requirements for all SOM IT environments.

4.   **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:

4.1.   maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State's Confidential Information that comply with the requirements of the State's data security policies as set forth in the Contract**,** and must, at a minimum, remain compliant with FISMA and NIST Special Publication 800-53 (most recent version) MOD Controls using minimum control values as established in applicable State PSP's;

4.2.   maintain FedRAMP authorization for all Hosting Provider environments, other than physical colocation providers, throughout the Term, and in the event the contractor is unable to maintain FedRAMP authorized for hosted services, the , 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 7.1 of the Contract;

4.3.   maintain "Contractor Systems" with a FedRAMP authorization or an annual SSAE 18 SOC 2 Type 2 audit based on State defined NIST MOD controls for the Hosted Services throughout the Term;

4.4.   ensure that the Software and SOM 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

4.5.   provide technical and organizational safeguards against accidental, unlawful or unauthorized

access to or access, use, destruction, loss, modification, encryption, disclosure, transfer, commingling or processing of such information that ensure a level of security appropriate to the risks presented by the processing of the State's Information and the nature of such Information, consistent with best industry practice and applicable State PSP's (including, but not limited to, compliance with FISMA, NIST,CMS, FBI, IRS and HIPAA requirements);

4.6. 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 "malicious actors" and others who may seek, without authorization, to disrupt, damage, encrypt, modify, copy, access or otherwise use Contractor Systems or the State Data found therein; and

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

4.7. ensure that State Data is encrypted in transit and at rest using AES encryption and a key size of 128 bits or higher ;

4.8. ensure that State Data is encrypted in transit and at rest using FISMA / FIPS PUB 140-2 validated encryption modules;

4.9. ensure the Contractor Systems implements FIPS/NIST compliant multi-factor authentication for privileged/administrative and other identified access, to be implemented within 90 days of executing the Contract; and

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

5. Unauthorized Access. Contractor may not access, and shall not permit any access to, State systems, in whole or in part, whether through Contractor's Systems or otherwise, without the State's express prior written authorization. Such authorization may be revoked by the State in writing at any time in its sole discretion. Any access to State systems must be solely in accordance with the Contract and this Schedule, and in no case exceed the scope of the State's authorization pursuant to this **Section 5**. 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.

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

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

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

6.3.   if requested by the State, provide a copy of Contractor's FedRAMP System Security Plan(s) or SOC 2 report(s) to the State within thirty (30) days. The System Security Plan will be recognized as Contractor's Confidential Information.

7. **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 Secure Web Application and other applicable Standards.

Contractor's application scanning and remediation must include without limitation, each of, the following types of scans and activities:

7.1.   Dynamic Application Security Testing (DAST) – Scanning interactive application for vulnerabilities, analysis, remediation, and validation.

a)   Contractor must either 1) grant the State the right to dynamically scan the application code to a deployed version of the solution; or 2) in lieu of the State performing the scan, Contractor must dynamically scan the application using a State-approved application scanning tool, and provide the State a vulnerabilities assessment after Contractor has completed the required scans; further 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.

7.2.   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 the 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 vulnerabilities assessment after Contractor has completed the required scans.

7.3.   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 software must be documented and the source supplier must be monitored for notification of identified vulnerabilities. SCA scans will be included as part of SAST and DAST scanning and Contractor will employ the use of existing staff monitoring procedures to meet third party software security requirements. These scans must be completed for all third-party code initially, and for all third-party code in each major release.

7.4.   Application scanning and remediation must include the following types of scans and activities as required based on, regulatory requirements, data classification and/or composition, or as identified in contractual agreements.

a)   If provided as part of the solution, all native mobile application software must meet the scanning requirements including any interaction with an application programing interface (API).

8. Infrastructure Scanning

8.1.   For Hosted Services, Contractor must ensure the infrastructure and applications are scanned using a State Approved Vulnerability Scanning Tool at least quarterly and provide the scan's assessments to the State in a format that 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.

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

SCHEDULE E
DISASTER RECOVERY PLAN

(Contractor's Disaster Recovery Plan is included as an attachment)

SCHEDULE F
Federal Provisions Addendum

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.

(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 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 contracts 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.

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, 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

66

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 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

67

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.

(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—

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. 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) <u>Access to Records</u>. 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 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) <u>Changes.</u>
See the provisions regarding modifications or change notice in the Contract Terms.

(3) <u>DHS Seal, Logo, And Flags</u>
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) <u>Compliance with Federal Law, Regulations, and Executive Orders</u>
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) <u>No Obligation by Federal Government</u>
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) <u>Program Fraud and False or Fraudulent Statements or Related Acts</u>
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.

Exhibit 1 - Byrd Anti-Lobbying Certification

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.

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, _____ , 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.

_____

Signature of Contractor's Authorized Official

_____

Name and Title of Contractor's Authorized Official

_____

Date