



STATE OF MICHIGAN PROCUREMENT
 Department of Technology, Management, and Budget
 525 W. Allegan St, Lansing MI 48933

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. 20000000358
 between
 THE STATE OF MICHIGAN
 and

CONTRACTOR	AMI Strategies Inc.
	17187 North Laurel Park Drive, Suite 125
	Livonia, MI. 48152
	David Boonie
	248-957-2387
	dboonie@amistrategies.com
	VS0116581

STATE	Program Manager	Robert Feguer	DTMB
		517-241-5054	
Contract Administrator	FeguerR@michigan.gov		
	Jordan Sherlock	DTMB	
	517-243-5556		
		Sherlockj@michigan.gov	

CONTRACT SUMMARY			
DESCRIPTION: Invoice Auditing Software			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
3/07/2020	3/06/2025	(5) 1 year	
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$1,315,000.00

FOR THE CONTRACTOR:

AMI Strategies, Inc.
Company Name


Authorized Agent Signature

David A. Boonie
Authorized Agent (Print or Type)

January 7, 2019
Date

FOR THE STATE:


Signature

Simon Baldwin, IT Category Manager
Name & Title

DTMB Central Procurement
Agency

2/9/2020
Date

CONTRACT TERMS

This Software Contract (this “**Contract**”) is agreed to between the State of Michigan (the “**State**”) and AMI Strategies Inc (“**Contractor**”), a Michigan Corporation. This Contract is effective on March, 07, 2020 (“**Effective Date**”), and unless earlier terminated, will expire on March, 06, 2025 (the “**Term**”).

This Contract may be renewed for up to 5 additional 1-year periods. Renewal must be by written notice from the State and will automatically extend the Term of this Contract.

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

“**Acceptance**” has the meaning set forth in **Section 12.5**.

“**Acceptance Tests**” means such tests as may be conducted in accordance with **Section 12** and the Statement of Work to determine whether the Software meets the requirements of this Contract and the Documentation.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, the term “control” (including the terms “controlled by” and “under common control with”) means the direct or indirect ownership of more than fifty percent (50%) of the voting securities of a Person.

“**Allegedly Infringing Materials**” has the meaning set forth in **Section 26.3(b)(ii)**.

“**API**” means all Application Programming Interfaces and associated API Documentation provided by Contractor, and as updated from time to time, to allow the Software to integrate with various State and Third Party Software.

“**Approved Open-Source Components**” means Open-Source Components that may be included in or used in connection with the Software and are specifically identified in an exhibit to the Statement of Work and approved by the State.

“**Authorized Users**” means all Persons authorized by the State to access and use the Software under this Contract, subject to the maximum number of users specified in the applicable Statement of Work.

“**Business Day**” means a day other than a Saturday, Sunday or other day on which the State is authorized or required by Law to be closed for business.

“**Business Owner**” is the individual appointed by the agency buyer to (a) act as the agency’s representative in all matters relating to the Contract, and (b) co-sign off on notice of Acceptance for the Software. The Business Owner will be identified in the Statement of Work.

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

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

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

“Change Proposal” has the meaning set forth in **Section 2.2(a)**.

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

“Confidential Information” has the meaning set forth in **Section 20.1**.

“Configuration” means State-specific changes made to the Software without Source Code or structural data model changes occurring.

“Contract” has the meaning set forth in the preamble.

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

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

“Contractor’s Bid Response” means the Contractor’s proposal submitted in response to the RFP.

“Contractor Personnel” means all employees of Contractor or any Permitted Subcontractors involved in the performance of Services hereunder.

“Contractor’s Test Package” has the meaning set forth in **Section 11.2**.

“Customization” means State-specific changes made to the Software’s underlying Source Code or data model.

“Deliverables” means the Software, and all other documents and other materials that Contractor is required to or otherwise does provide to the State under this Contract and otherwise in connection with any Services, including all items specifically identified as Deliverables in the Statement of Work.

“Dispute Resolution Procedure” has the meaning set forth in **Section 31.1**.

“Documentation” means 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.

“DTMB” means the Michigan Department of Technology, Management and Budget.

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

“Fees” means collectively, the License Fees, Implementation Fees, and Support Services Fees.

“Financial Audit Period” has the meaning set forth in **Section 29.1**.

“Force Majeure” has the meaning set forth in **Section 32.1**.

“Harmful Code” means any: (a) virus, trojan horse, worm, backdoor or other software or hardware devices the effect of which is to permit unauthorized access to, or to disable, erase, or otherwise harm, any computer, systems or software; or (b) time bomb, drop dead device, or other software or hardware device designed to disable a computer program automatically with the passage of time or under the positive control of any Person, or otherwise prevent, restrict or impede the State’s or any Authorized User’s use of such software.

“HIPAA” has the meaning set forth in **Section 19.1**.

“Implementation Fees” has the meaning set forth in **Section 16.2**.

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

“Integration Testing” has the meaning set forth in **Section 12.1(c)**.

“Intellectual Property Rights” means all or any of the following: (a) patents, patent disclosures, and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the associated goodwill; (c) copyrights and copyrightable works (including computer programs), mask works and rights in data and databases; (d) trade secrets, know-how and other confidential information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable Law in any jurisdiction throughout the world.

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

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree 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.

“License Agreement” has the meaning set forth in **Section 3**.

“License Fee” has the meaning set forth in **Section 16.1**.

“Loss or Losses” 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.

“Maintenance Release” means any update, upgrade, release or other adaptation or modification of the Software, including any updated Documentation, that Contractor may generally provide to its licensees from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the Software.

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

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

“New Version” means any new version of the Software that the Contractor may from time to time introduce and market generally as a distinct licensed product, as may be indicated by Contractor's designation of a new version number.

“Nonconformity” or **“Nonconformities”** means any failure or failures of the Software to conform to the requirements of this Contract, including any applicable Documentation.

“Open-Source Components” means any software component that is subject to any open-source copyright license agreement, including any GNU General Public License or GNU Library or Lesser Public License, or other obligation, restriction or license agreement that substantially conforms to the Open Source Definition as prescribed by the Open Source Initiative or otherwise may require disclosure or licensing to any third party of any source code with which such software component is used or compiled.

“Open-Source License” has the meaning set forth in **Section 4**.

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

“Permitted Subcontractor” has the meaning set forth in **Section 9.4**.

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

“Pricing” means any and all fees, rates and prices payable under this Contract, including pursuant to any Schedule or Exhibit hereto.

“Pricing Schedule” means the schedule attached as **Schedule C**, setting forth the License Fees, Implementation Fees, Support Services Fees, and any other fees, rates and prices payable under this Contract.

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

“Representatives” means a party's employees, officers, directors, partners, shareholders, agents, attorneys, successors and permitted assigns.

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

“Services” means any of the services Contractor is required to or otherwise does provide under this Contract, the Statement of Work, the Maintenance and Support Schedule (if applicable), or the Service Level Agreement (if applicable).

“Service Level Agreement” means, if applicable, the service level agreement attached as **Schedule D** to this Contract, setting forth Contractor’s obligations with respect to the hosting, management and operation of the Software.

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

“Software” means Contractor’s software set forth in the Statement of Work, and any Maintenance Releases or New Versions provided to the State and any Configurations or Customizations made by or for the State pursuant to this Contract, and all copies of the foregoing permitted under this Contract and the License Agreement.

“Source Code” means the human readable source code of the Software to which it relates, in the programming language in which the 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 Software.

“Specifications” means, for the Software, the specifications collectively set forth in the Business Requirements Specification, Technical Specification, Documentation, RFP or Contractor’s Bid Response, if any, for such Software, or elsewhere in the Statement of Work.

“State” means the State of Michigan.

“State Data” has the meaning set forth in **Section 19.1**.

“State Materials” means all materials and information, including documents, data, know-how, ideas, methodologies, specifications, software, content and technology, in any form or media, directly or indirectly provided or made available to Contractor by or on behalf of the State in connection with this Contract.

“State Resources” has the meaning set forth in **Section 10.1(a)**.

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

“Stop Work Order” has the meaning set forth in **Section 24**.

“Support Services” means the software maintenance and support services Contractor is required to or otherwise does provide to the State under the Maintenance and Support Schedule (if applicable) or the Service Level Agreement (if applicable).

“Support Services Commencement Date” means, with respect to the Software, the date on which the Warranty Period for the Software expires, or such other date as may be set forth in the Statement of Work.

“Support Services Fees” has the meaning set forth in **Section 16.3**.

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

“Term” has the meaning set forth in the preamble.

“Test Data” has the meaning set forth in **Section 11.2**.

“Test Estimates” has the meaning set forth in **Section 11.2**.

“Testing Period” has the meaning set forth in **Section 12.1(b)**.

“Third Party” means any Person other than the State or Contractor.

“Transition Period” has the meaning set forth in **Section 23.3**

“Transition Responsibilities” has the meaning set forth in **Section 23.3**.

“Unauthorized Removal” has the meaning set forth in **Section 9.3(b)**.

“Unauthorized Removal Credit” has the meaning set forth in **Section 9.3(c)**.

“User Data” means all data, information and other content of any type and in any format, medium or form, whether audio, visual, digital, screen, GUI or other, that is input, uploaded to, placed into or collected, stored, processed, generated or output by any device, system or network by or on behalf of the State, including any and all works, inventions, data, analyses and other information and materials resulting from any use of the Software by or on behalf of the State under this Contract, except that User Data does not include the Software or data, information or content, including any GUI, audio, visual or digital or other display or output, that is generated automatically upon executing the Software without additional user input.

“Warranty Period” means the ninety (90) calendar-day period commencing on the date of the State's Acceptance of the Software.

“Work Product” means all State-specific deliverables that Contractor is required to, or otherwise does, provide to the State under this Contract including but not limited to computer scripts, macros, user interfaces, reports, project management documents, forms, templates, and other State-specific documents and related materials together with all ideas, concepts, processes, and methodologies developed in connection with this Contract whether or not embodied in this Contract.

2. Statements of Work. Contractor shall provide Services and Deliverables pursuant to Statements of Work entered into under this Contract. No Statement of Work shall be effective unless signed by each party's Contract Administrator. The term of each Statement of Work shall commence on the parties' full execution of the Statement of Work and terminate when the parties have fully performed their obligations.

The terms and conditions of this Contract will apply at all times to any Statements of Work entered into by the parties and attached as a schedule to this Contract. The State shall have the right to terminate such Statement of Work as set forth in **Section 23**. Contractor acknowledges that time is of the essence with respect to Contractor's obligations under each Statement of Work and agrees that prompt and timely performance of all such obligations in accordance with this Contract and the Statements of Work (including the Implementation Plan and all Milestone Dates) is strictly required.

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

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

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

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

(d) a detailed description of the Software to be provided under this Contract, including the:

(i) version and release number of the Software;

(ii) Business Requirements Specification;

(iii) Technical Specification; and

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

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

(f) the due dates for payment of Fees and any invoicing requirements, including any Milestones on which any such Fees are conditioned, and such other information as the parties deem necessary;

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

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

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

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

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

- (i) a written description of the proposed Changes to any Services or Deliverables;
- (ii) an amended Implementation Plan reflecting: (A) the schedule for commencing and completing any additional or modified Services or Deliverables; and (B) the effect of such Changes, if any, on completing any other Services under the Statement of Work;
- (iii) any additional State Resources Contractor deems necessary to carry out such Changes; and
- (iv) any increase or decrease in Fees resulting from the proposed Changes, which increase, or decrease will reflect only the increase or decrease in time and expenses Contractor requires to carry out the Change.

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

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

- (i) require Contractor to perform the Services under the Statement of Work without the Change;
- (ii) require Contractor to continue to negotiate a Change Notice;
- (iii) initiate a Dispute Resolution Procedure; or
- (iv) notwithstanding any provision to the contrary in the Statement of Work, terminate this Contract under **Section 23**.

(d) No Change will be effective until the parties have executed a Change Notice. Except as the State may request in its Change Request or otherwise in writing, Contractor must continue to perform its obligations in accordance with the Statement of Work pending negotiation and execution of a Change Notice. Contractor will use its best efforts to limit any delays or Fee increases from any Change to those necessary to perform the Change in accordance with the applicable Change Notice. Each party is responsible for its own costs and expenses of preparing, evaluating, negotiating, and otherwise processing any Change Request, Change Proposal, and Change Notice.

(e) The performance of any functions, activities, tasks, obligations, roles and responsibilities comprising the Services as described in this Contract are considered part of the Services and, thus, will

not be considered a Change. This includes the delivery of all Deliverables in accordance with their respective Specifications, and the diagnosis and correction of Non-Conformities discovered in Deliverables prior to their Acceptance by the State or, subsequent to their Acceptance by the State, as necessary for Contractor to fulfill its associated warranty requirements and its Support Services under this Contract.

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

3. Software License. Contractor hereby grants to the State and its Authorized Users the right and license to use the Software and Documentation in accordance with the terms and conditions of this Contract and the License Agreement set forth in **Schedule B** (the "**License Agreement**").

4. Open-Source Licenses. Any use hereunder of Open-Source Components shall be governed by, and subject to, the terms and conditions of the applicable open-source license ("**Open-Source License**"). Contractor shall identify and describe in an exhibit to the Statement of Work each of the Approved Open-Source Components of the Software, and include an exhibit attaching all applicable Open-Source Software Licenses or identifying the URL where these licenses are publicly available.

5. Software Implementation.

5.1 Implementation. Contractor will deliver, install, configure, integrate, and otherwise provide and make fully operational the Software on or prior to the applicable Milestone Date in accordance with the criteria set forth in the Statement of Work.

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

6. Hosting. If the Operating Environment for the Software is externally hosted by Contractor or a subcontractor, Contractor will maintain the Availability Requirement and the Support Service Level Requirement set forth in the Service Level Agreement attached as **Schedule D** to this Contract.

7. Support Services

7.1 Support Services for Externally Hosted Software. If the Operating Environment for the Software is externally hosted by Contractor or a subcontractor, Contractor shall provide the State with the Support Services described in the Service Level Agreement attached as **Schedule D** to this Contract. Such Support Services shall be provided:

(a) Free of charge during the Warranty Period, it being acknowledged and agreed that the License Fee includes full consideration for such Services during such period.

(b) Thereafter, for so long as the State elects to receive Support Services for the Software, in consideration of the State's payment of Support Services Fees in accordance with **Section 16** and the rates set forth in the Pricing Schedule.

8. Data Privacy and Information Security.

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

8.2 To the extent that Contractor has access to the State's computer system, Contractor must comply with the State's Acceptable Use Policy, see https://www.michigan.gov/documents/dtmb/1340.00.01_Acceptable_Use_of_Information_Technology_Standard_458958_7.pdf. All Contractor Personnel will be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State's system. The State reserves the right to terminate Contractor's access to the State's system if a violation occurs.

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

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

8.5 State's Right to Termination for Deficiencies. The State reserves the right, at its sole election, to immediately terminate this Contract or the Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this **Section 8**.

8.6 Security Requirements for Externally Hosted Software. If the Operating Environment for the Software is externally hosted by Contractor or a subcontractor, Contractor shall comply with the security requirements set forth in **Schedule E** to this Contract.

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

9.1 Contractor Personnel.

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

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

- (i) ensure that such Contractor Personnel have the legal right to work in the United States;
- (ii) upon request, require such Contractor Personnel to execute written agreements, in form and substance acceptable to the State, that bind such Contractor Personnel to confidentiality provisions that are at least as protective of the State's information (including all Confidential Information) as those contained in this Contract; and
- (iii) upon request, perform background checks on all Contractor Personnel prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks on Contractor Personnel. 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.

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

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

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

(a) Contractor's Project Manager must:

- (i) have the requisite authority, and necessary skill, experience, and qualifications, to perform in such capacity;
- (ii) be responsible for overall management and supervision of Contractor's performance under this Contract; and
- (iii) be the State's primary point of contact for communications with respect to this Contract, including with respect to giving and receiving all day-to-day approvals and consents.

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

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

- (i) the State requests in writing the removal of Contractor's Project Manager;
- (ii) the State consents in writing to any removal requested by Contractor in writing;
- (iii) Contractor's Project Manager ceases to be employed by Contractor, whether by resignation, involuntary termination or otherwise.

(d) Contractor will promptly replace its Project Manager on the occurrence of any event set forth in **Section 9.2(c)**. Such replacement will be subject to the State's prior written approval.

9.3 Contractor's Key Personnel.

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

(b) Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("**Unauthorized Removal**"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under **Section 23.1**.

(c) It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in

respect of which the State does not elect to exercise its rights under **Section 23.1**, Contractor will issue to the State an amount equal to \$25,000 per individual (each, an “**Unauthorized Removal Credit**”).

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

9.4 Subcontractors. Contractor will not, without the prior written approval of the State, which consent may be given or withheld in the State’s sole discretion, engage any Third Party to perform Services. The State’s approval of any such Third Party (each approved Third Party, a “**Permitted Subcontractor**”) does not relieve Contractor of its representations, warranties or obligations under this Contract. Without limiting the foregoing, Contractor will:

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

(b) name the State a third-party beneficiary under Contractor’s Contract with each Permitted Subcontractor with respect to the Services;

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

(d) notify the State of the location of the Permitted Subcontractor and indicate if it is located within the continental United States.

10. State Obligations.

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

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

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

10.2 State Project Manager. Throughout the Term of this Contract, the State will maintain a State employee to serve as the State’s Project Manager under this Contract. The State’s Project Manager will be identified in the Statement of Work. The State’s Project Manager will be available as set forth in the Statement of Work.

11. Pre-Delivery Testing.

11.1 Testing By Contractor. Before delivering and installing the Software, Contractor must:

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

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

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

11.2 Test Data and Estimates. Unless otherwise specified in the Statement of Work, Contractor shall provide to the State all test data and testing scripts used by Contractor for its pre-delivery testing (“**Test Data**”), together with the results Contractor expects to be achieved by processing the Test Data using the Software (“**Test Estimates**,” and together with Test Data, “**Contractor’s Test Package**”).

12. Acceptance Testing.

12.1 Acceptance Testing.

(a) Unless otherwise specified in the Statement of Work, upon installation of the Software, Acceptance Tests will be conducted as set forth in this **Section 12** to ensure the Software conforms to the requirements of this Contract, including the applicable Specifications and Documentation. The State may, but is not obligated, to perform its own pretest on the Software utilizing Contractor’s Test Package. If the State does perform a pretest, and Contractor’s Test Package does not successfully pass the Test Data or Test Estimate scripts as described by Contractor, the State, at its discretion, is not obligated to move into the formal Acceptance Tests set forth in this Section. The State may elect to send Contractor’s Test Package back to Contractor to correct any problems encountered with the Test Data or Test Estimates.

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

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

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

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

(c) Upon delivery and installation of any API, Configuration or Customization to the Software under the Statement of Work, additional Acceptance Tests will be performed on the modified Software as a whole to ensure full operability, integration, and compatibility among all elements of the Software

("Integration Testing"). Integration Testing is subject to all procedural and other terms and conditions set forth in **Section 12.1**, **Section 12.3**, and **Section 12.4**.

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

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

(a) If such notice is provided by either party and identifies any Non-Conformities, the parties' rights, remedies, and obligations will be as set forth in **Section 12.3** and **Section 12.4**.

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

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

- (i) notify Contractor in writing of Non-Conformities the State has observed in the Software and of the State's non-acceptance thereof, whereupon the parties' rights, remedies and obligations will be as set forth in **Section 12.3** and **Section 12.4**; or
- (ii) provide Contractor with a written notice of its Acceptance of such Software, which must be signed by the State's Business Owner and Project Manager.

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

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

(b) receipt of the State's notice under **Section 12.1(a)** or **Section 12.2(c)(i)**, identifying any Non-Conformities.

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

- (a) continue the process set forth in this **Section 12**;

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

(c) deem the failure to be a non-curable material breach of this Contract and the Statement of Work and terminate this Contract for cause in accordance with **Section 23.1**.

12.5 Acceptance. Acceptance (“**Acceptance**”) of the Software (subject, where applicable, to the State’s right to Integration Testing) will occur on the date that is the earliest of the State’s delivery of a notice accepting the Software under **Section 12.2(b)**, or **Section 12.2(c)(ii)**.

13. Training. Contractor shall provide, at no additional charge, training on all uses of the Software permitted hereunder in accordance with the times, locations and other terms set forth in the Statement of Work. Upon the State's request, Contractor shall timely provide training for additional Authorized Users or other additional training on all uses of the Software for which the State requests such training, at such reasonable times and locations and pursuant to such rates and other terms as are set forth in the Pricing Schedule.

14. Maintenance Releases; New Versions

14.1 Maintenance Releases. Provided that the State is current on its Support Services Fees, during the Term, Contractor shall provide the State, at no additional charge, with all Maintenance Releases, each of which will constitute Software and be subject to the terms and conditions of this Contract.

14.2 New Versions. Provided that the State is current on its Support Services Fees, during the Term, Contractor shall provide the State, at no additional charge, with all New Versions, each of which will constitute Software and be subject to the terms and conditions of this Contract.

14.3 Installation. In the event that the Contractor provides the Software in a Software-as-a Service (SaaS) platform, all Maintenance Releases or New Versions shall be automatically uploaded to the product with adequate notice, training and documentation to the State. In the event that the Contractor does not provide the Software in a (SaaS) platform, (i) the State will have no obligation to install or use any Maintenance Release or New Versions; (ii), if the State wishes to install any Maintenance Release or New Version, the State shall have the right to have such Maintenance Release or New Version installed, in the State's discretion, by Contractor or other authorized party as set forth in the Statement of Work; (iii) Contractor shall provide the State, at no additional charge, adequate Documentation for installation of the Maintenance Release or New Version, which has been developed and tested by Contractor and Acceptance Tested by the State; and (iv) the State’s decision not to install or implement a Maintenance Release or New Version of the Software will not affect its right to receive Support Services throughout the Term of this Contract.

15. Source Code Escrow

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

16. Fees

16.1 License Fee. In consideration of, and as payment in full for, the rights and license to use the Software and Documentation as provided in this Contract and the License Agreement, the State shall pay

to Contractor the license fees (the “**License Fee**”) set forth on the Pricing Schedule, subject to and in accordance with the terms and conditions of this Contract and the License Agreement, including the applicable timetable and other provisions of the Statement of Work and this **Section 16**.

16.2 Implementation Fees. In consideration of, and as payment in full for, Contractor’s provision of implementation services as provided in this Contract and the Statement of Work, the State shall pay to Contractor the implementation fees (the “**Implementation Fees**”) 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 the Statement of Work and this **Section 16**.

16.3 Support Service Fees. In consideration of Contractor providing the Support Services as required under the Maintenance and Support Schedule (as applicable) or the Service Level Agreement (as applicable), the State shall pay to Contractor the Support Services fees (the “**Support Service Fees**”) set forth in the Pricing Schedule, subject to and in accordance with the terms and conditions of this Contract, including the applicable provisions of the Maintenance and Support Schedule (as applicable) or the Service Level Agreement (as applicable) and this **Section 16**.

16.4 Firm Pricing/Fee Changes. All Pricing set forth in this Contract is firm and will not be increased, except as otherwise expressly provided in this **Section 16.4**.

(a) The License Fee will not be increased at any time except for the addition of additional licenses, the fees for which licenses will also remain firm in accordance with the Pricing set forth in the Pricing Schedule.

17. Invoices and Payment.

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

(a) clearly identify the Contract 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.

17.2 Payment. Invoices are due and payable by the State, in accordance with the State’s standard payment procedures as specified in 1984 Public Act no. 279, MCL 17.51, et seq., within forty-five (45)

calendar days after receipt, provided the State determines that the invoice was properly rendered. The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/SIGMAVSS> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment

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

17.4 Payment Disputes. 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 any Services or fail to perform any obligation hereunder by reason of the State's good faith withholding of any payment or amount in accordance with this **Section 17.4** or any dispute arising therefrom.

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

18. Intellectual Property Rights

18.1 Ownership Rights in Software

- (a) Subject to the rights and licenses granted by Contractor in this Contract and the License Agreement, and the provisions of **Section 18.1(b)**:
 - (i) Contractor reserves and retains its entire right, title and interest in and to all Intellectual Property Rights arising out of or relating to the Software; and
 - (ii) none of the State or Authorized Users acquire any ownership of Intellectual Property Rights in or to the Software or Documentation as a result of this Contract.

(b) As between the State, on the one hand, and Contractor, on the other hand, the State has, reserves and retains, sole and exclusive ownership of all right, title and interest in and to User Data, including all Intellectual Property Rights arising therefrom or relating thereto.

18.2 Rights in Open-Source Components. Ownership of all Intellectual Property Rights in Open-Source Components shall remain with the respective owners thereof, subject to the State's rights under the applicable Open-Source Licenses.

18.3 The State is and will be the sole and exclusive owner of all right, title, and interest in and to all API and Work Product developed exclusively for the State under this Contract, including all Intellectual Property Rights. In furtherance of the foregoing:

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

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

- (i) assigns, transfers, and otherwise conveys to the State, irrevocably and in perpetuity, throughout the universe, all right, title, and interest in and to such API or Work Product, including all Intellectual Property Rights; and
- (ii) irrevocably waives any and all claims Contractor may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of *droit moral* with respect to the API or Work Product.

19. State Data.

19.1 Ownership. The State's data ("**State Data**"), which will be treated by Contractor as Confidential Information, includes: (a) User Data; and (b) any other data collected, used, processed, stored, or generated by the State 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** 19.1 survives termination or expiration of this Contract.

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

otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This **Section 19.2** survives termination or expiration of this Contract.

19.3 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 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 19.3** are to be considered direct damages and not consequential damages. This section survives termination or expiration of this Contract. This Section survives termination or expiration of this Contract.

19.4 State's Governance, Risk and Compliance (GRC) platform. Contractor is required to assist the State with its security accreditation process through the development, completion and ongoing updating of a system security plan using the State's automated GRC platform and implement any required safeguards or remediate any security vulnerabilities as identified by the results of the security accreditation process.

19.5 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 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.

20. Confidential Information. Each party acknowledges that it may be exposed to or acquire communication or data of the other party that is confidential in nature and is not intended to be disclosed to third parties. This **Section 20** survives termination or expiration of this Contract.

20.1 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.

20.2 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 20.2**.

20.3 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.

20.4 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.

20.5 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.

21. 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.

22. ADA Compliance. The State is required to comply with the Americans with Disabilities Act of 1990 (ADA), and has adopted a formal policy regarding accessibility requirements for websites and software applications. Contractor's Service Software must comply, where relevant, with level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.0.

23. Termination, Expiration, Transition. The State may terminate this Contract, the Support Services, or any Statement of Work, in accordance with the following:

23.1 Termination for Cause. 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 23.1**, 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 23.2**.

(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, including any prepaid Support Services Fees. 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.

23.2 Termination for Other Than Cause.

(a) **Termination for Non-appropriation.** The State may immediately terminate this Contract in whole or in part, without penalty, for appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (i) cease performance immediately, or (ii) continue to perform in accordance with **Section 23.3**. If the State terminates this Contract for appropriation or budget shortfalls, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities, to the extent the funds are available.

(b) **Termination for Convenience.** The State may immediately terminate this Contract, provided it gives notice to Contractor, Ninety (90) days before the end of each annual term, in whole or in part, without penalty and for any reason. The termination notice will specify whether Contractor must: (a) cease performance immediately, or (b) continue to perform in accordance with **Section 23.3**. But in no event shall Contractor be obligated to refund any pre-paid License Fee paid through the end of each one-year term. 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 if the transition Period should extend beyond the date of the annual term.

23.3 **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 Contract 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.

23.4 **Survival.** This **Section 23** survives termination or expiration of this Contract.

24. 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.

25. Contractor Representations and Warranties.

25.1 **Authority.** Contractor represents and warrants to the State that:

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

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

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

(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; and

(e) 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.

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

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

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

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

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

25.3 Software Representations and Warranties. Contractor further represents and warrants to the State that:

(a) it is the legal and beneficial owner of the entire right, title and interest in and to the Software, including all Intellectual Property Rights relating thereto;

(b) it has, and throughout the license term, will retain the unconditional and irrevocable right, power and authority to grant and perform the license hereunder;

(c) the Software, and the State's use thereof, is and throughout the license term will be free and clear of all encumbrances, liens and security interests of any kind;

(d) neither its grant of the license, nor its performance under this Contract does or to its knowledge will at any time:

- (i) conflict with or violate any applicable Law;
- (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 to any third party;

(e) when used by the State or any Authorized User in accordance with this Contract and the Documentation, the Software or Documentation as delivered or installed by Contractor does not or will not:

- (i) infringe, misappropriate or otherwise violate any Intellectual Property Right or other right of any third party; or
- (ii) fail to comply with any applicable Law;

(f) as provided by Contractor, the Software does not or will not at any time during the license term contain any:

- (i) Harmful Code; or
- (ii) Open-Source Components or operate in such a way that it is developed or compiled with or linked to any Open-Source Components, other than Approved Open-Source Components specifically described in the Statement of Work.

(g) all Documentation is and will be complete and accurate in all material respects when provided to the State such that at no time during the license term will the Software have any material undocumented feature; and

(h) it will perform all Services in a timely, skillful, professional and workmanlike manner in accordance with commercially reasonable industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications, and will devote adequate resources to meet its obligations under this Contract.

(i) when used in the Operating Environment (or any successor thereto) in accordance with the Documentation, all Software as provided by Contractor, will be fully operable, meet all applicable specifications, and function in all respects, in conformity with this Contract and the Documentation; and

(j) no Maintenance Release or New Version, when properly installed in accordance with this Contract, will have a material adverse effect on the functionality or operability of the Software.

25.4 Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, CONTRACTOR HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THIS CONTRACT.

26. Indemnification

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

26.2 Indemnification Procedure. The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations. The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense, at its own cost and expense, if the State deems necessary. Contractor will not, without the State's prior written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. Any litigation activity on behalf of the State or any of its subdivisions, under this **Section 26**, 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.

26.3 Infringement Remedies.

(a) The remedies set forth in this **Section 26.3** are in addition to, and not in lieu of, all other remedies that may be available to the State under this Contract or otherwise, including the State's right to be indemnified for such actions.

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

- (i) procure for the State the right to continue to use such Software or component thereof to the full extent contemplated by this Contract; or
- (ii) modify or replace the materials that infringe or are alleged to infringe ("**Allegedly Infringing Materials**") to make the Software and all of its components non-infringing while providing fully equivalent features and functionality.

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

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

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

(d) If Contractor directs the State to cease using any Software under **subsection (c)**, the State may terminate this Contract for cause under **Section 23.1**.

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

- (i) Contractor's compliance with any designs, specifications, or instructions of the State; or
- (ii) modification of the Software by the State without the prior knowledge and approval of Contractor;

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

27. Liquidated Damages.

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

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

27.3 The assessment of liquidated damages will not constitute a waiver or release of any other remedy the State may have under this Contract for Contractor's breach of this Contract, including without limitation, the State's right to terminate this Contract for cause under **Section 23.1**, and the State will be entitled in its discretion to recover actual damages caused by Contractor's failure to perform its obligations under this Contract. However, the State will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages.

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

28. Damages Disclaimers and Limitations.

28.1 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.

28.2 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 PAYABLE UNDER THIS CONTRACT.

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

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

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

29.3 Application. This **Section 29** applies to Contractor, any Affiliate, and any Permitted Subcontractor that performs Services in connection with this Contract.

30. Insurance

30.1 Required Coverage.

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

Insurance Type	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional

<p>\$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit</p> <p>\$2,000,000 Products/Completed Operations</p> <p><u>Deductible Maximum:</u></p> <p>\$50,000 Each Occurrence</p>	<p>insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.</p>
Umbrella or Excess Liability Insurance	
<p><u>Minimal Limits:</u></p> <p>\$5,000,000 General Aggregate</p>	<p>Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds.</p>
Automobile Liability Insurance	
<p><u>Minimal Limits:</u></p> <p>\$1,000,000 Per Occurrence</p>	
Workers' Compensation Insurance	
<p><u>Minimal Limits:</u></p> <p>Coverage according to applicable laws governing work activities.</p>	<p>Waiver of subrogation, except where waiver is prohibited by law.</p>
Employers Liability Insurance	
<p><u>Minimal Limits:</u></p> <p>\$500,000 Each Accident</p> <p>\$500,000 Each Employee by Disease</p> <p>\$500,000 Aggregate Disease.</p>	
Privacy and Security Liability (Cyber Liability) Insurance	
<p><u>Minimal Limits:</u></p>	<p>Contractor must have their policy: (1) endorsed to add "the State of Michigan,</p>

\$1,000,000 Each Occurrence	its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.
\$1,000,000 Annual Aggregate	

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

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

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

30.2 Non-waiver. This **Section 30** 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).

31. Dispute Resolution.

31.1 Unless otherwise specified in the Statement of Work, the parties will endeavor to resolve any Contract dispute in accordance with **Section 31** (the “**Dispute Resolution Procedure**”). The initiating party will reduce its description of the dispute to writing (including all supporting documentation) and deliver it to the responding party’s Project Manager. The responding party’s Project Manager must respond in writing within five (5) Business Days. The initiating party has five (5) Business Days to review the response. If after such review resolution cannot be reached, both parties will have an additional five (5) Business Days to negotiate in good faith to resolve the dispute. If the dispute cannot be resolved within a total of fifteen (15) Business Days, the parties must submit the dispute to the parties’ Contract Administrators. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

31.2 Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties’ Contract Administrators, and either Contract Administrator concludes that resolution is unlikely, or fails to respond within fifteen (15) Business Days. The parties are not prohibited from

instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This **Section 31** does not limit the State's right to terminate this Contract.

32. General Provisions

32.1 Force Majeure.

(a) Force Majeure Events. Subject to **Subsection (b)** below, 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**"), 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.

(b) 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.

32.2 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.

32.3 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 nor bind the other party in any manner whatsoever.

32.4 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.

32.5 Notices. All notices, requests, consents, claims, demands, waivers and other communications under this Contract must be in writing and addressed to the parties as follows (or as otherwise specified by a party in a notice given in accordance with this **Section 32.5**):

If to Contractor: 17187 North Laurel Park Drive, Suite 125
Livonia, MI. 48152
Email: dboonie@amistrategies.com
Attention: David Boonie – Vice President
Attention: Charles P. Barnes-General Counsel
cbarnes@amistrategies.com

If to State: 525 W. Allegan St. Lansing, MI 48909
Email: Sherlockj@michigan.gov
Attention: Jordan Sherlock – Contract Administrator

Notices sent in accordance with this **Section 32.5** 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.

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

32.7 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 23.1**, 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 32.7** is void.

32.8 No Third-party Beneficiaries. This Contract is for the sole benefit of the parties and their respective successors and permitted assigns. 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.

32.9 Amendment and Modification; Waiver. No amendment to or modification of this Contract is effective unless it is in writing, identified as an amendment to this Contract and signed by both parties

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

32.10 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.

32.11 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.

32.12 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 may 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 32.12**.

32.13 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.

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

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

32.16 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.

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

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

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

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

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

32.20 Entire Agreement. This Contract, together with all Schedules, Exhibits, and the Statement of Work 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, representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Contract, the Schedules, Exhibits, and the Statement of Work, the following order of precedence governs: (a) first, this Contract, excluding its Exhibits and Schedules, and the Statement of Work; and (b) second, the Statement of Work as of the Effective Date; and (c) third, the Exhibits and Schedules to this Contract as of the Effective Date. 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 CONDITION

Schedule A - Statement of Work

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. "Solution" means the Commercial-Off-the-Shelf (COTS) solution that the State is seeking under this Contract.

Term	Definition
DTMB	Department of Technology Management and Budget.
FS	Financial Services.
QDF	Qualified Disable Veterans
SIGMA	State Integrated Governmental Management Applications

2. PURPOSE

This State of Michigan (SOM) Department of Technology, Management & Budget (DTMB) contract is for an invoice processing system to be utilized by IT Financial Services. This solution is to be externally hosted. DTMB Financial Services will utilize this system to receive, track, audit, approve and submit Vendor invoices for payment processing. The system will be leveraged to validate billing details on invoices by comparing them to existing contractual agreements to ensure accuracy of billing rates, to ensure there are no errors or omissions, and to meet audit compliance requirements. This system will also be used to generate reports that will be used by IT Billing, IT Budget and IT Procurement Services.

3. CONTRACT TERM

The contract overall term is 5 years with 5, 1-year options

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 conform to State IT policies and standards. All services and products provided as a result of this contract must comply with all applicable State IT policies and standards. Contractor is required to review all applicable links provided below.

Public IT Policies, Standards and Procedures (PSP):

https://www.michigan.gov/dtmb/0,5552,7-358-82547_56579_56755---,00.html

Acceptable Use Policy

To the extent that Contractor has access to the State's computer system, Contractor must comply with the State's Acceptable Use Policy, see https://www.michigan.gov/documents/dtmb/1340.00.01_Acceptable_Use_of_Information_Technology_Standard_458958_7.pdf . All Contractor Personnel will be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State's system. The State reserves the right to terminate Contractor's access to the State's system if a violation occurs.

Look and Feel Standard

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.

Mobile Responsiveness

The Contractors Solution must utilize responsive design practices to ensure the application is accessible via a mobile device.

ADA Compliance

The State is required to comply with the Americans with Disabilities Act of 1990 (ADA), and has adopted a formal policy regarding accessibility requirements for websites and software applications. The State is requiring that the Solution, where relevant, to level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.0. Contractor may consider, where relevant, the W3C's Guidance on Applying WCAG 2.0 to Non-Web Information and Communications Technologies (WCAG2ICT) for non-web software and content. The State may require that the Contractor complete a Voluntary Product Accessibility Template for WCAG 2.0 (WCAG 2.0 VPAT) or other comparable document for the Solution.

http://www.michigan.gov/documents/dmb/1650.00_209567_7.pdf?20151026134621

5. USER TYPE AND CAPACITY

Type of User	Access Type	Number of Users	Number of Concurrent Users
State Employees	Admin Access	50	40
Trusted Third Parties	Admin Access	50	40

Contractor must be able to meet the expected number of concurrent Users.

6. ACCESS CONTROL AND AUDIT

The Contractors 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:

1. MILogin/Michigan Identity, Credential, and Access Management (MICAM)
 - a. 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.

2. MILogin Identity Federation
 - a. Allows federated single sign-on (SSO) for business partners, as well as citizen-based applications.
3. MILogin Multi Factor Authentication (MFA, based on system data classification requirements)
 - a. Required for those applications where data classification is Confidential and Restricted as defined by the 1340.00 Michigan Information Technology Information Security standard (i.e. the proposed solution must comply with PHI, PCI, CJIS, IRS, and other standards).
4. MILogin Identity Proofing Services (based on system data classification requirements)
 - a. 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.

To integrate with the SOM MILogin solution, the solution must support HTTP Headers based SSO, or SAML, or OAuth or OpenID interfaces for the SSO purposes.

7. DATA RETENTION

Contractor must be able to store the States' data for a minimum of 7 years.

8. SECURITY

Externally Hosted

The Solution will be storing sensitive data. Contractor must adhere to the following guidelines:

-
- Must provide a FedRAMP authorized cloud hosted solution and maintain an annual SSAE 16 or 18 SOC 2 Type 2 audit or FedRAMP SSP for the Solution.
- Must be encrypted in transit and at rest using FIPS certified encryption modules with AES 256 bit or higher encryption keys.
- Must have FISMA compliant multi-factor authentication for privileged/administrative access or other identified access.
- Must remain compliant with FISMA and the NIST Special Publication 800.53 (most recent version) MOD controls using minimum control values as established in the applicable SOM PSP's.

9. END USER OPERATING ENVIRONMENT

The SOM environment is X86 VMware, IBM Power VM and Oracle VM, with supporting enterprise storage monitoring and management.

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

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

This information can be found at www.michigan.gov/browserstats. Please use the most recent calendar quarter to determine browser statistics. For those browsers with over 2% of site traffic, except Internet

Explorer which requires support for at minimum version 11, the current browser version as well as the previous two major versions must be supported.

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

10. SOFTWARE

TemNOW™ is a software as a service (SaaS), enterprise wide, web- based product that provides the State with the ability to manage invoices from receipt to payment, manage disputes from audit to resolution, manage inventory from order to procurement, and make strategic decisions based on reporting trends and data analytics. TemNOW™ provides all the interfaces required to allow The State to manage their own telecom environment.

11. INTEGRATION

Contractor must be able to integrate with any State Internal Application.

12. TRAINING SERVICES

The Contractor must provide administration and end-user training for implementation, go-live support, and transition to customer self-sufficiency. The Contractor must provide available training options and include details such as: typical class size, materials to be provided, class duration, on-site or web based. The Contractor must provide a training plan for go-live support and transition to self-support, including options and details such as the number of dedicated personnel, staff location, hours available and duration of go-live support.

13. SUPPORT AND OPERATIONS

Support-Hours

The State requires the Contractor to provide Support Hours as 8 a.m. to 5 p.m. Eastern, Monday thru Friday. As new releases of temNOW™ become available or server maintenance is required, an email announcement will be sent out to all authorized users announcing a planned maintenance window. The email announcement will be sent out a minimum of 24 hours in advance of the schedule maintenance window.

14. 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.

15. 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; and (d) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

16. CONTRACTOR KEY PERSONNEL

Contractor must identify all Contractor resources and responsibilities required for the successful implementation and ongoing support of the Solution.

Contractor Contract Administrator. Is appointed to (a) administer the terms of this Contract, and (b) approve and execute any Change Notices under this Contract.

Contractor: AMI Strategies
Name: David Boonie
Address: 17187 North Laurel Park Drive, Suite 125 Livonia, MI. 48152
Phone: (248) 957-2387
Email: dboonie@amistrategies.com

Contractor Project Manager. Contractor Project Manager will 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.

Contractor: AMI Strategies
Name: Kimberly Knoll
Address: 17187 North Laurel Park Drive, Suite 125 Livonia, MI. 48152
Phone: (248) 962-8461
Email: kknoll@amistrategies.com

Contractor Service Manager. Contractor to provide name of individual to serve as 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.

Contractor: AMI Strategies
Name: Alex Orille
Address: 17187 North Laurel Park Drive, Suite 125 Livonia, MI. 48152
Phone: (248) 957-4228
Email: aorille@amistrategies.com

Contractor Security Officer. This is the individual 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: AMI Strategies
Name: Dean Keeler
Address: 17187 North Laurel Park Drive, Suite 125 Livonia, MI. 48152
Phone: (248) 957-4225
Email: dkeeler@amistrategies.com

17. CONTRACTOR PERSONNEL REQUIREMENTS

Contractor must present certifications evidencing satisfactory Michigan State Police Background checks ICHAT and drug tests for all staff identified for assignment 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), if required by project.

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

18. 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 Project Manager. The State Project Manager will serve as the primary contact with regard to implementation Services who will have the authority to act on behalf of the State in approving Deliverables, and day to day activities.

Agency Business Owner. The Agency Business Owner will serve as the primary contact for the business area with regard to business advisement who will have the authority to act on behalf of the State in matters pertaining to the business Specifications.

State Technical Lead. The State Technical Lead will serve as the primary contact with regard to implementation technical advisement.

19. MEETINGS

The Contractor must attend the following meetings at no additional cost to the State.

Contractor will facilitate a kick-off meeting with appropriate State stakeholders to review the Solution currently deployed and provided by AMI Strategies. Meeting purpose will be to confirm that all Solution components as identified in this contract (Exhibit A Project Scope and Worksheet, Integration, Contract Terms, Sched B Maintenance and Support, SLA, Data Security, Disaster Recovery) are being delivered by the Contractor to the State's expectations and identify any opportunities for strategic improvement or innovation. The output of the meeting would be a list of identified and agreed tasks, description of task requirements, and task completion date. Contractors Project Mgr. will facilitate weekly update meetings on task completion progress. Additionally, contractor will facilitate a monthly on-site or virtual governance meeting for the provided Solution.

20. PROJECT REPORTS

Once the Project Kick-Off meeting has occurred, the Contractor Project Manager will monitor project implementation progress and report on a weekly basis to the State's Project Manager the following:

- Progress to complete milestones, comparing forecasted completion dates to planned and actual completion dates
- Accomplishments during the reporting period
- 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

The contractor agrees to provide the State with the following reports as well:

Report Name	Description	Reporting Frequency
SLA	SLA Metrics and Performance Compliance	Monthly
Contract	Compliance Review	Quarterly or Semi-Annual
Security Compliance	SOC 2 Type 2 Audit Report	Annually
Client Spend Analysis	This report analyzes the State's spend by vendor and by business category based on a start and end date.	On-Demand and Subscribe-able
Invoice Date Status Report	This report displays invoice life cycle date information	On-Demand and Subscribe-able
Average Audit and Overdue for Imported Bills	This report will display payment information as well as alert the user to any overdue invoices in a given date range	On-Demand and Subscribe-able
Invoice Charge Comparison	This report shows a comparison of charges from an invoice and the previous invoice for that account	On-Demand and Subscribe-able
Payment Approval	This report will produce a payment package for the OEFS Financial Services Division to pay invoices. The report includes a packaging sheet showing number of invoices and total payment, a payment approval cover sheet, and the summary sheet for each invoice being paid.	On-Demand and Subscribe-able
Production Report	This Report will display one year's worth of invoice data categorized by the Cost Pool on the allocation. The data displayed will be for 1 year ending in the month/year combination chosen.	On-Demand and Subscribe-able

Payables Activity	This report displays information about the life cycle of the invoice and payment information about the invoice	On-Demand and Subscribe-able
-------------------	--	------------------------------

21. MILESTONES AND DELIVERABLES

The State's proposed milestone schedule and associated deliverables are set forth below.

Milestone Event	Associated Milestone Deliverable(s)	Schedule
Project Planning	Project Kickoff	Contract Execution + 10 days
Requirements and Design Validation	Validation sessions, Final Requirement Validation Document, Final Design Document, Final Implementation Document	Execution + 30 days
Installation and Configuration of software	Final Solution and Testing Document	As Needed
Testing and Acceptance	Final Test Results Report, Final Training Documentation, Final Acceptance	Ongoing
Production Support Services	Ongoing after Final Acceptance.	Ongoing

The Contractor Project Manager will be responsible for maintaining an MS Project schedule (or approved alternative) identifying tasks, durations, forecasted dates and resources – both Contractor and State - required to meet the timeframes as agreed to by both parties.

Changes to scope, schedule or cost must be addressed through a formal change request process with the State and the Contractor to ensure understanding, agreement and approval of authorized parties to the change and clearly identify the impact to the overall project.

SUITE Documentation

In managing its obligation to meet the above milestones and deliverables, the Contractor is required to utilize the applicable [State Unified Information Technology Environment \(SUITE\)](#) methodologies, or an equivalent methodology proposed by the Contractor.

SUITE's primary goal is the delivery of on-time, on-budget, quality systems that meet customer expectations. SUITE is based on industry best practices, including those identified in the Project Management Institute's (The Project Management Body of Knowledge) PMBoK and the Capability Maturity Model Integration for Development. It was designed and implemented to standardize methodologies, processes, procedures, training, and tools for project management and systems development lifecycle management. It offers guidance for efficient, effective improvement across multiple process disciplines in the organization, improvements to best practices incorporated from earlier models, and a common, integrated vision of improvement for all project and system related elements.

While applying the SUITE framework through its methodologies is required, SUITE was not designed to add layers of complexity to project execution. There should be no additional costs from the Contractor, since it is expected that they are already following industry best practices which are at least similar to those that form SUITE's foundation.

SUITE's companion templates are used to document project progress or deliverables. In some cases, Contractor may have in place their own set of templates for similar use. Because SUITE can be tailored to fit specific projects, project teams and State project managers may decide to use the Contractor's provided templates, as long as they demonstrate fulfillment of the SUITE methodologies.

22. PRICING

If Contractor reduces its prices for any of the software or services during the term of this Contract, the State shall have the immediate benefit of such lower prices for new purchases. Contractor shall send notice to the State's Contract Administrator with the reduced prices within fifteen (15) Business Days of the reduction taking effect.

Travel and Expenses

The State does not pay for overtime or travel expenses.

23. ADDITIONAL 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

REQUIRED	
1.0	System must be able to Import all data fields available from the vendor's electronic invoice data to appropriately identify all invoice billing information, accounts, circuits, both recurring & nonrecurring charges, call records, and all details for customer service records (CSR), and all detailed records for Data circuits.
2.0	The system must Disclose Usage or non-usage Charges, Not limited to the following: Casual, Any Third-Party Charges, Local, Long Distance, Discounts, Taxes, Regulations Fees, Directory Fees, International Charges, Late fees, Install, or disconnect, early termination fees.
3.0	The system must be able to identify and update all items that are new or have changed status, (either contract or invoice) upon receipt, no matter the dollar value
4.0	The system must allow an authorized program/system administrator to generate reports
5.0	The system must provide reporting features that show detailed invoice, Payables Activity Report, agency summary report and all other types of report that the agency will like to generate.
6.0	The system must complete data validations to confirm required fields are completed prior to allowing invoice submission
7.0	The system must allow the data export format options to be administratively configured. Supported options to select must include: (a) PDF (b) MS Excel (c) Comma separated values (CSV)
8.0	The system must associate all charges to the purchase order and general ledger account/accounts
9.0	The system must have the ability to assign roles for invoice processing – the distinction between approver and payer
10.0	The system must enable system administrator to assign authorized user with the responsibility of maintaining user access.
11.0	The system must allow an authorized program/system administrator to create and manage program participant notifications and alerts
12.0	The system must present a summary of notifications, actions, and activity that is user specific upon login (i.e., dashboard type presentation).
13.0	The system must have the ability to manage the SIGMA coding block by defining the 18 segments and then creating a pattern that concatenated the segments together to create the SIGMA coding block. The segments must adhere to the Min and Max characters as defined by SIMGA as well as the SIGMA format for each segment. The created GL code also needs to display a description along with start and end dates
14.0	The system must have an issue tracking feature where users can submit issues to resolved; this will include the ability to track and monitor all submitted issues, users should only see the issues they submitted, Administrators can see all submitted issues.
15.0	The system must provide immediate notification of any disconnect notice received.

	<p>Methods of notification must include:</p> <ul style="list-style-type: none"> (a) Document (b) Message
16.0	The system must have the ability to assign accounts to specific users, those individuals would only see their assigned accounts; Admins would see all accounts
17.0	The system must allow an authorized web administrator to maintain web content available to non-credentialed public users.
18.0	The system must allow all Inventory to be searchable. A corresponding inventory report would be available on demand that will show all additions and removals with dates, as well as current inventory by Master Account.
19.0	The system must be able to integrate with the state SIGMA system to allow for invoice payments to integrate into the SIGMA payment system.
20.0	<p>The solution must support the following digital content formats for uploaded files:</p> <ul style="list-style-type: none"> (a) *.pdf (b) *.doc (c) *.docx (d) *.jpeg
21.0	Provide an Upload Manger that lists all Payment Data Upload information, including Upload schedule, Upload name, Available Date, Follow Up Date, Completions Date, Processor, Alert Statue, and Instructions if provided.
22.0	The system must be configurable enough for invoices to carry invoice number, bill dates, period covered for each invoice where available from vendor.
23.0	The system must provide a discount calculator through the contract module with contract rate entry for new year rate entry if needed
24.0	The system must have the ability to receive, upload, and display warrant information for every processed invoice from the SOM

SCHEDULE B - Licensing Agreement

For purposes of this Schedule, all initial capitalized terms in this Schedule that are not defined in this Schedule shall have the respective meanings given to them in the Contract.

Contractor ("AMI") grants to the State (the "Client") pursuant to this Contract a limited license to the temNOW[™] software and any third-party or associated software contained therein or enhanced through its required use, including but not limited to ServiceNow[™], Invoice AI[™] and any enhancements thereto under the following terms and conditions (the "Software").

1. Ownership. Client acknowledges that it is receiving a non-exclusive license, non-transferable, revocable (as set forth in this Contract) for Authorized Users to access the Software during the Term of this Contract for the purposes of utilizing the software. This software shall be considered a "software as a service" product which shall provide for concurrent users. All methods, concepts, software, development tools and techniques remain the sole and exclusive property of AMI.

- a. Any Reports related to customization or implementation of any Software, independent utilities, tools and programs that are or were developed or owned by AMI prior to or independent of the Services performed under any SOW ("AMI Property") remain the property of AMI. Nothing contained herein shall authorize Client to separate AMI Property from the Reports in which they are incorporated or to market, sublicense, modify or create derivative works of AMI Property as a stand-alone product. Client will not, or assist to, decompile, disassemble or otherwise reverse engineer any of the Software or contribute to its decompilation, disassembly or reverse engineering by any third party.

2. Retained Rights of AMI. AMI shall retain the right to use its general knowledge, experience, know-how, methods, inventions, works, processes, ideas, interfaces, components, concepts, tools and techniques developed by AMI outside the scope of AMI's Services hereunder or in connection with AMI's engagements with other Clients. AMI agrees that all Reports created or developed by AMI, except for standardized reports and modifications thereto, shall be the sole and exclusive property of Client.

3. Third Party Components. AMI shall specify in each SOW any third-party products or materials to be incorporated into or provided as any Reports prepared under such SOW ("Third-Party Components"). Unless stated otherwise in the applicable SOW, Client shall be responsible for obtaining appropriate license for such Third-Party Components and for paying any applicable license fee. AMI shall be responsible for providing reasonable assistance to Client for securing all such licenses required from third parties for Client's use of any such Third-Party Components. Notwithstanding the foregoing, in the event that AMI cannot at the time of the SOW determine whether any Third Party Component will be incorporated into or provided as a Report, AMI shall, as early as possible, but no later than the specification phase, notify Client of such Third Party Components. Such notification shall be deemed to be included in the SOW for purposes of this Agreement.

AMI has no control over the quality, legality, accuracy, or completeness of the Client's data or other information provided by the Client or the Client's vendors.

- a. AMI shall not be responsible for any damages or incur any liability in respect of any third-party equipment, software (not licensed by AMI) or third-party services used by the Client.

4. TERM AND TERMINATION

- a. Term. The term of this License Agreement shall commence on the Effective Date of this Contract and terminate under the conditions set forth therein.

5. MISCELLANEOUS.

- a. Concurrent Licenses and Users. Access to temNOW™ is driven by concurrent licensing. Licenses are assigned a "User" when the User accesses the system. When the User logs out of the system, times out or terminates the browser session, the license is release for the next User to access the system with. The client profile within the temNOW™ system will be set to allow a maximum of 40 concurrent licenses. As a result, the Licensee can have any number of Users defined within the temNOW™ system but only 40 users could access the system at any one time.

Schedule C - PRICING

Quick payment terms: 4 % discount off invoice if paid within 30 days after receipt of invoice.

State of MI - DTMB Revision 3 - - 11 14 2019		AMI RFP Pricing Based on SOM RFP Specifications 5-year Term Pricing (plus 5 additional year options)				
		Annual Cost				
Description	Year - 1	Year - 2	Year - 3	Year - 4	Year - 5	
Implementation Services Initial Setup as Applicable	N/A	N/A	N/A	N/A	N/A	
Licensing	N/A	N/A	N/A	N/A	N/A	
Invoice Import Services	\$1,800.00	\$1,872.00	\$1,946.88	\$2,024.76	\$2,105.75	
Invoice Processing Services	\$146,250.00	\$152,100.00	\$158,184.00	\$164,511.36	\$171,091.81	
Solution Support and Maintenance	N/A	N/A	N/A	N/A	N/A	
Solution Total	\$148,050.00	\$153,972.00	\$160,130.88	\$166,536.12	\$173,197.56	
Solution Total with optional Annual Pre-Payment Discount of 1.04/Net 30.	\$142,128.00	\$147,813.12	\$153,725.64	\$159,874.68	\$166,269.66	
Additional five (5) one (1) year option terms	Upon expiration of the initial five (5) year term, and subject to the terms of the Pricing Exhibit, the State of MI may extend this agreement for up to five (5) successive one (1) year option terms under the same Terms and Conditions, via a written change notice to this SOW.					
Professional Services Staffing Category For T&M Labor	Firm Fixed Hourly Rate					
ServiceNow Developer	\$150					
UI Path Developer	\$150					
Project/Program Manager	\$145					
Senior Telecom Analyst	\$110					
Vendor Dispute Specialist	\$95					
Invoice Analyst	\$85					
Invoice Payment Specialist	\$85					
Invoice Allocation Specialist	\$75					
Custom Software Modification and Development	\$150					
Training	\$70					

SCHEDULE D - Service Level Agreement

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 4.1**.

“**Availability Requirement**” has the meaning set forth in **Section 4.1**.

“**Available**” has the meaning set forth in **Section 4.1**.

“**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 4.1**.

“**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.

4.1. 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 99.98% 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: $(\text{Actual Uptime} - \text{Total Minutes in Service Period Hosted Services are not Available Due to an Exception}) \div (\text{Scheduled Uptime} - \text{Total Minutes in Service Period Hosted Services are not Available Due to an Exception}) \times 100 = \text{Availability}$.

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: (a) last no longer than five (5) hours; (b) be scheduled between the hours of 12:00 a.m. and 5:00 a.m., Eastern Time; and (c) occur no more frequently than once per week; provided that Contractor may request the State to approve extensions of Scheduled Downtime above five (5) hours, and such approval by the State may not be unreasonably withheld or delayed.

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
≥99.98%	None

<99.98% but ≥99.0%	15%
<99.0% but ≥95.0%	50%
<95.0%	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 24 hours a day, seven days a week;
- (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, Maintenance 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; provided that Contractor shall consult with the State and is required to receive State approval prior to modifying or upgrading Hosted Services, including Maintenance Releases and New Versions of Software; 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	<ul style="list-style-type: none"> • Issue affecting entire system or single critical production function;

	<ul style="list-style-type: none"> • System down or operating in materially degraded state; • Data integrity at risk; • Declared a Critical Support Request by the State; or • Widespread access interruptions.
High Service Error	<ul style="list-style-type: none"> • Primary component failure that materially impairs its performance; or • Data entry or access is materially impaired on a limited basis.
Medium Service Error	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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	Service Level Metric	Service Level Credits (For Failure to Respond to any	Service Level Credits (For Failure to Resolve any
--------------------------------	----------------------	----------------------	---	--

	(Required Response Time)	(Required Resolution Time)	Support Request Within the Corresponding Response Time) *Not to Exceed 25% of Fees in any month.	Support Request Within the Corresponding Required Resolution Time) *Not to Exceed 25% of Fees in any month.
Critical Service Error	One (1) hour	Three (3) hours	Five percent (5%) of the 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 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	One (1) hour	Four (4) hours	Three percent (3%) of the Fees for the month in which the initial Service Level Failure begins and three percent (3%) of	Three percent (3%) of the 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 portion thereof that the corresponding Service Error is not responded to within the required response time.	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.
Medium Service Error	Three (3) hours	Two (2) Business Days	N/A	N/A
Low Service Error	Three (3) hours	Five (5) Business Days	N/A	N/A

(c) Escalation. With respect to any Critical Service Error Support Request, until such Support Request is Resolved, Contractor will escalate that Support Request within sixty (60) minutes 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. Support Service Level Credits. 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. Corrective Action Plan. 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.
- (b) no Force Majeure Event modifies or excuses Contractor's obligations under **Sections 19** (State Data), **20** (Confidentiality), or **27** (Indemnification) of the Contract, **Section 7** (Disaster Recovery and Backup) of this Schedule, the Availability Requirement defined in this Schedule, or any security requirements under the Contract, the Statement of Work, or applicable Schedule.

7. 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 G**. 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 7**;
- (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; and
- (c) Contractor will conduct, or cause to be conducted periodic back-ups of State Data at a frequency that will ensure the backup and disaster recovery requirements set forth in this Schedule E. 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.

SCHEDULE E - Data Security Requirements

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.

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

“**Contractor Systems**” has the meaning set forth in **Section 5** of this Schedule.

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

“**Hosted Services**” means the hosting, management and operation of the computing hardware, ancillary equipment, Software, firmware, data, other services (including support services), and related resources for remote electronic access and use by the State and its Authorized Users, including any services and facilities related to disaster recovery obligations.

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

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

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

3.1. provide a secure hosted environment for the Software and the State’s Confidential Information, and such hosted environment i) will adhere to the following compliance designations: SSAE 16, SOC I and SOC 2, HIPPA/HITECH, GLBA, PCI DSS v3.2, ii) is ITAR and EU-US Privacy Shield registered, and iii) will be migrated to a FedRAMP authorized hosting center by March 1st. 2020 and after March 1st 2020 Contractor will maintain hosting of the Software and the State’s Confidential Information in a FedRAMP authorized computing environment for the Hosted Services throughout the remainder of the Term;

3.2. ensure that the Software is securely hosted, supported, administered, and accessed in a data center that resides in the continental United States, and minimally meets Uptime Institute Tier 3 standards (www.uptimeinstitute.com), or its equivalent;

3.3. 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 the NIST Special Publication

800.53 (most recent version) MOD Controls using minimum control values as established in the applicable SOM PSP's;

3.4. provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, 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 Confidential Information and the nature of such Confidential Information, consistent with best industry practice and standards;

3.5. take all reasonable measures to:

- (a) secure and defend all locations, equipment, systems and other materials and facilities employed in connection with the Services against "hackers" and others who may seek, without authorization, to disrupt, damage, modify, access or otherwise use Contractor Systems or the information found therein; and
- (b) prevent (i) the State and its Authorized Users from having access to the data of other customers or such other customer's users of the Services; (ii) the State's Confidential 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's Confidential Information;

3.6. ensure that State Data is encrypted in transit and at rest using FIPS certified encryption modules with AES 256bit or higher encryption keys;

3.7. ensure the Hosted Services support Identity Federation/Single Sign-on (SSO) capabilities using Security Assertion Markup Language (SAML) or comparable mechanisms;

3.8. ensure the Hosted Services have FISMA compliant multi-factor authentication for privileged/administrative and other identified access; and

3.9. assist the State, at no additional cost, with development and completion of a system security plan using the State's automated governance, risk and compliance (GRC) platform.

4. 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 4**. 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.

5. Contractor Systems. Contractor will be solely responsible for the information technology infrastructure, including all computers, software, databases, electronic systems (including database management systems) and networks used by or for Contractor in connection with the Services ("**Contractor Systems**") and shall prevent unauthorized access to State systems through the Contractor Systems.

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 Confidential Information, including any backup, disaster recovery or other policies, practices or procedures relating to the State's Confidential Information and any other information relevant to its compliance with this Schedule;

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. Maintain an annual SSAE 16 or SSAE 18 SOC 2 Type 2 audit or FedRAMP SSP for the Hosted Services throughout the Term, and if requested by the State, provide a copy of Contractor's SSAE 16 or SSAE 18 SOC 2 Type 2 audit report or FedRAMP SSP to the State within thirty (30) days after Contractor's receipt of such report. Any such audit reports will be recognized as Contractor's Confidential Information.

7. 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.