



STATE OF MICHIGAN PROCUREMENT

Michigan Department of Education

608 West Allegan Street, Lansing, Michigan 48933

P.O. Box 30008, Lansing, Michigan 48909

CONTRACT CHANGE NOTICE

Change Notice Number **5**

to

Contract Number **313B7700015C**

CONTRACTOR	Qualtrics LLC
	333 W. River Park Drive
	Provo, UT 84604
	Kristin Shotland
	704-519-9611
	kristins@qualtrics.com
	VS0012573

STATE	Program Manager	Katelyn Boswell Gallagher	MDE/OEE
		517-241-7021	
		boswellgallagherk@michigan.gov	
	Contract Administrator	Carol Munroe	MDE/OFM
		517-241-3329	
		munroec@michigan.gov	

CONTRACT SUMMARY				
Qualtrics Survey System				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
12/01/2017	06/30/2018	Five 1-year	06/30/2023	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45 Days		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				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input checked="" type="checkbox"/>	2yr	06/30/2025
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$338,400.00		\$122,000.00	\$460,400.00	
Effective June 16, 2023, the following changes are made to this Contract: 1. Useful Life Extension - Term extended to June 30, 2025 2. Contract value is hereby increased by \$122,000.00 - FY23-FY25 3. State Contract Administrator changed to Carol Munroe. 4. State Program Manager changed to Katelynn Boswell Gallagher 5. Contractor Notice Contact changed to Kristin Shotland 6. Contract Terms - Adding to Termination for Convenience – Notwithstanding anything to the contrary set forth in the Agreement, any right of Customer to terminate without cause is only available without refund and on the condition that all fees set forth herein are paid in full. All other terms, conditions, and specifications remain the same per Contractor, Agency Agreement, DTMB & State Administrative Board approval				



STATE OF MICHIGAN PROCUREMENT

Michigan Department of Education

608 West Allegan Street, Lansing, Michigan 48933

P.O. Box 30008, Lansing, Michigan 48909

CONTRACT CHANGE NOTICE

Change Notice Number **4**

to

Contract Number **313B7700015C**

CONTRACTOR	Qualtrics LLC
	333 W. River Park Drive
	Provo, UT 84604
	Jason Stanton
	716-946-8492
	jasonstranton@qualtrics.com
	VS0012573

STATE	Program Manager	Joshua Roesner	MDE/OEE
		517-335-5236	
		Roesnerj1@michigan.gov	
	Contract Administrator	Tanmay Desai	MDE/OFM
		517-241-2170	
		desait@michigan.gov	

CONTRACT SUMMARY				
Qualtrics Survey System				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
12/01/2017	06/30/2018	Five 1-year	06/30/2021	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45 Days		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				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	2-year	<input type="checkbox"/>		06/30/2023
CURRENT VALUE		VALUE OF CHANGE NOTICE		ESTIMATED AGGREGATE CONTRACT VALUE
\$225,600.00		\$112,800.00		\$338,400.00
Effective January 11, 2021, the following changes are made to this Contract:				
1. The final two (2) option years available on this Contract are hereby exercised. The revised contract expiration date is June 30, 2023.				
2. Contract value is hereby increased by \$112,800.00				
All other terms, conditions, and specifications remain the same per Contractor, Agency Agreement, & State Administrative Board.				



STATE OF MICHIGAN PROCUREMENT

Michigan Department of Education

608 West Allegan Street, Lansing, Michigan 48933

P.O. Box 30008, Lansing, Michigan 48909

CONTRACT CHANGE NOTICE

Change Notice Number **3**
to
Contract Number **313B7700015C**

CONTRACTOR	Qualtrics LLC
	333 W. River Park Drive
	Provo, UT 84604
	Jason Stanton
	716-946-8492
	jasonstranton@qualtrics.com
	VS0012573

STATE	Program Manager	Joshua Roesner	MDE/OEE
		517-335-5236	
		Roesnerj1@michigan.gov	
	Contract Administrator	Tanmay Desai	MDE/OFM
		517-241-2170	
		desait@michigan.gov	

CONTRACT SUMMARY				
Qualtrics Survey System				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
12/01/2017	06/30/2018	Five 1-year	06/30/2020	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45 Days		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				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1-year	<input type="checkbox"/>		06/30/2021
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$169,200.00		\$56,400.00	\$225,600.00	
Effective June 25, 2020, the following changes are made to this Contract:				
1. The 3 rd option year available on this Contract is hereby exercised. The revised contract expiration date is June 30,2021. 2. Contract value is hereby increased by \$56,400.00 3. State Contract Administrator is changed to Tanmay Desai. 4. Revised – Schedule A – Section 6 – Price Term & Payment – Sub Section - 6.2 Payment - is revised from Net 60 Days to Net 45 Days.				
All other terms, conditions, and specifications remain the same per Contractor, Agency Agreement, & State Administrative Board				



STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Department of Education

608 W. ALLEGAN ST., LANSING, MICHIGAN 48933

P.O. BOX 30008, LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number 2
to
Contract Number **313B7700015C**

CONTRACTOR	Qualtrics LLC 333 W. River Park Drive Provo, UT 84604
	Jordan Daley
	801-822-4074
	jdaley@qualtrics.com
	VS0012573

STATE	Program Manager	Joshua Roesner	MDE - OEE
		517-335-5236	
	Contract Administrator	RoesnerJ1@michigan.gov	
		Ruth Thole	MDE - OFM
		517-241-2170	
		TholeR@michigan.gov	

CONTRACT SUMMARY				
Qualtrics Survey System				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
12/01/2017	06/30/2018	Five 1-year	06/30/2019	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 60 Days		NA		
MINIMUM DELIVERY REQUIREMENTS				
NA				
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	
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1 year	<input type="checkbox"/>		06/30/2020
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$112,800.00		\$56,400.00	\$169,200.00	
Effective July 1, 2019, the following changes are made to this Contract:				
1. The second option year available on this Contract is hereby exercised. The revised contract expiration date is June 30, 2020.				
2. This Contract is hereby increased \$56,400.00				
3. The State Contract Administrator's Phone Number has changed to 517-241-2170				
All other terms, conditions, and specifications remain the same.				
Per contractor and agency agreement.				



STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Department of Education

608 W. ALLEGAN ST., LANSING, MICHIGAN 48933

P.O. BOX 30008, LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number 1
to
Contract Number **313B7700015C**

CONTRACTOR	Qualtrics LLC 333 W. River Park Drive Provo, UT 84604
	Jordan Daley
	801-822-4074
	jdaley@qualtrics.com
	VS0012573

STATE	Program Manager	Joshua Roesner	OET
		517-335-5236	
		RoesnerJ1@michigan.gov	
	Contract Administrator	Ruth Thole	OFM
		517-373-3823	
		TholeR@michigan.gov	

CONTRACT SUMMARY				
Qualtrics Survey System				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
12/01/2017	06/30/2018	Five 1-year	06/30/2018	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 60 Days		NA		
MINIMUM DELIVERY REQUIREMENTS				
NA				
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXPIRATION DATE
<input checked="" type="checkbox"/>	1 year	<input type="checkbox"/>		06/30/2019
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$56,400.00		\$56,400.00	\$112,800.00	

Effective April 2, 2018, the following changes are made to this Contract:

1. The first option year available on this Contract is hereby exercised. The revised contract expiration date is June 30, 2019.
2. This Contract is hereby increased \$56,400.00.
3. The Contractor's contact is changed to Jordan Daley and the State's Program Manager is changed to Joshua Roesner.

All other terms, conditions, and specifications remain the same.

Per contractor and agency agreement



STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Department of Education
608 W. Allegan, Lansing MI 48933
P.O. Box 30008, Lansing, MI 48909

NOTICE OF CONTRACT

CONTRACT NO. **313B7700015C**

between

THE STATE OF MICHIGAN

and

CONTRACTOR	Qualtrics LLC 333 W. River Park Drive Provo, UT 84604
	Michael Rowland
	385-203-4280
	mrowland@qualtrics.com
	VS0012573

STATE	Program Manager	Phil Chase	OPPS
		517-241-3960	
		ChaseP2@michigan.gov	
	Contract Administrator	Ruth Thole	OFM
		517-373-3823	
		TholeR@michigan.gov	

CONTRACT SUMMARY			
Qualtrics Survey System			
INITIAL TERM	INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS
7 months	12/01/2017	06/30/2018	Five 1-year
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 60 Days			
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION		\$56,400.00	



STATE OF MICHIGAN

CONTRACT TERMS Software as a Service (SaaS)

This Software as a Service Contract (this "**Contract**") is agreed to between the State of Michigan (the "**State**") and Qualtrics, LLC ("**Contractor**"), a Delaware limited liability company. This Contract is effective on December 1, 2017 ("**Effective Date**"), and unless earlier terminated, will expire on June 30, 2018 (the "**Term**").

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

1. Definitions.

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

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

"**Action**" has the meaning set forth in **Section 13.1**.

"**Allegedly Infringing Features**" has the meaning set forth in **Section 13.2(b)(ii)**.

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

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

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

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

"**Code**" has the meaning set forth in **Section 18**.

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

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

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

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

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

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

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

“Deliverables” means all software deliverables, 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 and specifically identified as Deliverables in any Statement of Work.

“Documentation” means all generally available documentation relating to the Services on the Contractor’s support website.

“DR Plan” has the meaning set forth in **Schedule C**.

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

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

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

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

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

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

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

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

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

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

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

"Personal Health Information (PHI)" has the meaning set forth in **Section 9.1**.

"Personally Identifiable Information (PII)" has the meaning set forth in **Section 9.1**.

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

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

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

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

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

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

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

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

"Services" has the meaning set forth in **Section 2.1**.

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

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

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

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

"State Modification" has the meaning set forth in **Section 13.1(a)**.

"State Project Manager" has the meaning set forth in **Section 2.7**.

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

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

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

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

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

“**Survey Data**” means any and all information input, collected, or generated in connection with the Services by or on behalf of the State or any Authorized User, including any survey definitions, survey questions developed and created by the State, response data, panel data, uploaded content such as graphics, user information, and any reports or other analysis or information based on or derived from any of the foregoing.

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

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

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

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

2. Services.

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

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

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

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

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

- (e) maintain a DR plan as set forth in **Schedule C** to this Contract; and
- (f) such other services or Deliverables as may be specified in the applicable Statement of Work.

2.2 Change Notices.

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

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

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

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

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

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

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

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

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

- (i) the identity of such Subcontractor and the location of all its data centers, if any, that will be used in Processing any State Data, which information Contractor shall promptly disclose to the State in writing; and
- (ii) a written confidentiality and restricted use agreement, giving the State rights at least equal to those set forth in **Section 9** (State Data), **Section 10** (Confidentiality), **Section 11** (Security) and **Section 12** (Disaster Recovery) and containing the Subcontractor's acknowledgment of, and agreement to, the provisions of **Section 2.5** (Contractor

Personnel), a fully-executed copy of which agreement Contractor will promptly provide to the State upon the State's request.

2.5 Contractor Personnel. Contractor will:

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

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

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

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

2.6 Management and Payment of Contractor Personnel.

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

(b) Contractor will ensure that no Person who has been convicted of a felony or any misdemeanor involving, in any way, theft, fraud, or bribery provides any Services or has access to any State Data, State Systems or State facilities. On a case-by-case basis, the State may request that Contractor initiate a background check on any Contractor Personnel before they may have access to State Data, State Systems or State facilities. Any request for a background check shall be initiated by the State and must be reasonably related to the type of work requested. The scope of the background check shall be consistent with industry standards and applicable State policies notified to Contractor and the results shall be used solely to determine the eligibility of Contractor Personnel to work with State Data, State Systems or in State facilities. Contractor will present attestation of satisfactory completion of such tests. Contractor is responsible for all costs and expenses associated with such background checks.

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

3. License Grant and Restrictions.

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

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

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

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

3.2 License Restrictions. The State will not: (a) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make the Hosted Services available to any third party, except as expressly permitted by this Contract or in any Statement of Work; (b) knowingly: (i) utilize (or allow utilization of) the Services in any manner prohibited by this agreement; (ii) reverse engineer the Services; (iii) tamper with the security of the Service Software; (c) knowingly permit its employees and other third parties to (i) gain unauthorized access to the Services; or (ii) make unauthorized copies of the Service Software, and, if any such unauthorized duplication or use is discovered, it will promptly notify Contractor and take prompt actions to resolve the issue; (d) knowingly utilize the Services to (i) send irrelevant or inappropriate messages to third parties (e.g., "spam"); (ii) send or store malicious software; or (iii) upload content that (A) infringes, misappropriates, or otherwise violates any third party's intellectual property right or (B) aggravates, harasses, threatens, defames or abuses Contractor or third parties; (e) use or authorize the use of the Services or Documentation in any manner or for any purpose that is unlawful under applicable Law; or (f) permit third parties to utilize the Services without obtaining the prior written consent of the State; provided, however, that the State may allow third parties to utilize the Services if such third parties are providing services to the State (but not for such third parties' own use) and if such third party is not a direct competitor of Contractor as can be reasonably determined. Contractor, in its sole discretion, reserves the right to restrict access to the State's account after providing notice to the State of unauthorized access or use and allowing the State a reasonable period to cure such unauthorized access or use.

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

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

4. Service Preparation, Testing and Acceptance.

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

4.2 Testing and Acceptance. Unless otherwise specified in the applicable Statement of Work, the following testing and acceptance procedure for Deliverables will apply:

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

(b) Upon completion of the State's testing, the State will notify Contractor of its acceptance ("**Accept**" or "**Acceptance**") or, if it has identified any noncompliance with the Specifications, rejection ("**Reject**" or "**Rejection**") of the Deliverables. If the State Rejects the Deliverables, the State will provide a written list of items that must be corrected. On receipt of the State's notice, Contractor will promptly commence, at no additional cost or charge to the State, all reasonable efforts to complete, as quickly as possible and in any event within twenty (20) days (or such other period as may be agreed upon by the Parties in writing) from receipt of the State's notice, such necessary corrections, repairs and modifications to the Deliverables to bring them into full compliance with the Specifications.

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

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

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

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

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

7. Termination, Expiration and Transition.

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

(a) Either party may terminate this Contract or an individual SOW for cause, in whole or in part, if the other party: (i) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; or (ii) breaches any of its material duties or obligations under this Contract or an individual SOW and fails to cure the breach within thirty (30) days after receiving notice of the breach. 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 either party terminates this Contract or an individual SOW under this **Section 7.1**, the terminating party will issue a termination notice specifying whether the other party must at the discretion of the terminating party: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of this Contract, the termination will be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in **Section 7.2**.

(c) For termination under this Section 7.1, the State will only pay for amounts due to Contractor for Services accepted by the State (other than the Hosted Services, which are not subject to acceptance testing) on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for unpaid Fee Credits due to the State. Contractor must promptly reimburse to the State any Fees prepaid by the State prorated to the date of such termination.

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

7.3 Transition Responsibilities. Upon termination or expiration of this Contract for any reason, Contractor must, for a period of thirty (30) days, which may be extended upon request at termination or expiration to a total of ninety (90) calendar days (the "**Transition Period**"), make available to the State a portal whereby the State may download and delete State Data. The State expressly acknowledges that Contractor has no obligation to retain State Data after the Transition Period has ended (the "**Transition Responsibilities**"). The Term of this Contract is automatically extended through the end of the Transition Period.

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

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

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

(c) Contractor will (i) destroy or return to the State all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the State's Confidential Information; (ii) permanently erase the State's Confidential Information from its computer systems; and (iii) certify in writing to the State that it has complied with the requirements of this **Section 7.4(c)**, in each case to the extent such materials are not required by Contractor for Transition Responsibilities, if any; provided that Contractor will not be obliged to destroy or erase any copies of the State's Confidential Information automatically saved to Contractor's electronic backup systems, unless those copies can be located and then destroyed or erased without significant time and effort..

7.5 Survival. The rights, obligations and conditions set forth in this **Section 7.5** and **Section 1** (Definitions), **Section 7.3** (Effect of Termination; Data Retention), **Section 9** (State Data), **Section 10** (Confidentiality), **Section 11** (Security), **Section 13** (Indemnification), **Section 14** (Limitations of Liability), and **Section 19** (General Provisions).

8. Fees and Expenses.

8.1 Fees. Subject to the terms and conditions of this Contract, the applicable Statement of Work, and the Service Level Agreement, the State shall pay the fees set forth in the applicable Statement of Work, subject to such increases and adjustments as may be permitted pursuant to **Section 8.2 ("Fees")**.

8.2 Fees during Option Years. Contractor's Fees are fixed during the initial one year period of the Term. Contractor may increase Fees for any renewal period by providing written notice to the State at least sixty (60) calendar days prior to the commencement of such renewal period. An increase of Fees for identical services for any renewal period may not exceed five percent (5%) of the Fees effective during the immediately preceding twelve (12) month period. No increase in Fees is effective unless made in compliance with the provisions of this **Section 8.2**.

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

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

8.5 Invoices. Contractor will invoice the State for Fees in accordance with the requirements set forth in the Statement of Work. 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.

8.6 Payment Terms. Invoices are due and payable by the State, in accordance with the State's standard payment procedures as specified in 1984 Public Act no. 279, MCL 17.51, *et seq.*, within forty-five (45) calendar days after receipt, provided the State determines that the invoice was properly rendered. The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/SIGMAVSS> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment.

8.7 State Audits of Contractor.

(a) During the Term, and for four (4) years after, Contractor must maintain complete and accurate books and records regarding its business operations relevant to the calculation of Fees and any other information relevant to Contractor's compliance with this **Section 8**. During the Term, and for four (4) years after, upon the State's request, Contractor must make such books and records and appropriate personnel, including all financial information, available during normal business hours for inspection and audit by the State or its authorized representative, provided that the State: (a) provides Contractor with at least fifteen (15) days prior notice of any audit, (b) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Contractor's normal business operations.

(b) The State may take copies and abstracts of materials audited. The State will pay the cost of such audits unless an audit reveals an overbilling or over-reporting of ten percent (10%) or more, in which case Contractor shall reimburse the State for the reasonable cost of the audit. Contractor must immediately upon written notice from the State pay the State the amount of any overpayment revealed by the audit, together with any reimbursement payable pursuant to the preceding sentence.

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

8.9 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 or delay any Hosted Services or Support Services or fail to perform any other Services or obligations hereunder by reason of the State's good faith withholding of any payment or amount in accordance with this **Section 8.9** or any dispute arising therefrom for a period of ninety (90) days.

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

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

9. State Data.

9.1 Ownership. The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) User Data; and (b) the State's data collected, used, processed, stored, or generated in connection with the Services, including but not limited to (i) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Services, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; (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; and (iii) Survey Data. 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. All State Data shall be located, at all times, in the continental United States. This **Section 9.1** survives termination or expiration of this Contract. Contractor is strictly a data processor, not a data controller for the processing of the State Data in order to provide the Services. The State solely determines: (a) what data to collect; (b) from whom; (c) from where; (d) for what purpose; and (e) when to delete it. All Data will be stored and processed in the continental United States, and Contractor will not transfer State Data out of the continental United States.

9.2 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 9.2** survives termination or expiration of this Contract.

9.3 Backup and Extraction of State Data. Contractor will conduct, or cause to be conducted periodic back-ups of State Data at a frequency that will ensure the RPO requirements set forth in **Schedule C** of this Contract. All backed up State Data shall be located in the continental United States. Contractor will make available to State all State Data within five (5) Business Days of the State's request without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), in the format specified by the State. Contractor is responsible for the backup of State Data for disaster recovery purposes only, and the State is responsible for routine backup and deletion of State Data.

9.4 Discovery. Contractor shall immediately notify the State upon receipt of any requests which in any way might reasonably require access to State Data or the State's use of the Hosted Services. Contractor shall notify the State Project Manager by the fastest means available and also in writing. In no event shall Contractor provide such notification more than two (2) business days 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, to the extent permitted by applicable law, first notifying the State and obtaining the State's prior approval of Contractor's proposed responses. Contractor agrees to use commercially reasonable efforts to provide its completed responses to the State with adequate time for State review, revision and approval.

9.5 Loss or Compromise of Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises 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 two (2) business days after becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including responding to reasonable requests from the State for relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise reasonably required by the State; (c) in the case of PII or PHI, to the extent required by applicable law, (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 (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; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) pay for any reasonable, out-of-pocket 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 restoring State Data from backups without charge to the State; and (i) provide to the State a detailed plan within fourteen (14) 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 to the extent known and/or applicable: 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 (not to be unreasonably withheld or delayed) 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 each party in writing prior to its dissemination. This **Section 9.5** survives termination or expiration of this Contract.

9.6 ADA Compliance. Throughout the Term of the Contract, Contractor agrees to (a) make commercially reasonable efforts to achieve Web Content Accessibility Guidelines (WCAG) 2.0 level AA compliance, (b) not deteriorate its current level of compliance with WCAG and Section 508 of the Rehabilitation Act and (c) provide updates regarding efforts and progress towards compliance with the WCAG 2.0 level AA standard any time upon the reasonable request of the State.

10. Confidentiality.

10.1 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; or, (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.

10.2 Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this 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 10.2.**

10.3 Cooperation to Prevent Disclosure of Confidential Information. Each party must use its commercially reasonable 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 promptly 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.

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

10.5 Surrender of Confidential Information upon Termination. Except as otherwise provided in Section 7 (Termination), upon termination or expiration of this Contract or a Statement of Work, in whole or in part, each party must promptly following such request, 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 promptly following such request.

11. Security. Throughout the Term and at all times in connection with its actual or required performance of the Services, Contractor will maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State's Confidential Information that comply with the requirements set forth in **Schedule C.**

12. Disaster Recovery and Backup. Throughout the Term and at all times in connection with its actual or required performance of the Services, Contractor will provide a Disaster Recovery Plan as set forth in **Schedule C.**

13. Indemnification.

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

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

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

(c) State Data uploaded to or collected into the Services.

13.2 Mitigation.

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

(b) Subject to the exclusions set forth in clauses (a), and (b) and (c) of **Section 13.1**, if any of the Services or any component or feature thereof is ruled to infringe or otherwise violate the rights of any third party by any court of competent jurisdiction, or if any use of any Services or any component thereof is threatened to be enjoined, or is likely to be enjoined or otherwise the subject of an infringement or misappropriation claim, Contractor must, at Contractor's sole cost and expense:

- (i) procure for the State the right to continue to access and use the Services to the full extent contemplated by this Contract and the Specifications; or
- (ii) modify or replace all components, features and operations of the Services that infringe or are alleged to infringe ("**Allegedly Infringing Features**") to make the Services non-infringing while providing equally or more suitable features and functionality, which modified and replacement services shall constitute Services and be subject to the terms and conditions of this Contract.

(c) If neither of the remedies set forth in **Section 13.2(b)** is reasonably available with respect to the Allegedly Infringing Features then Contractor may direct the State to cease any use of any materials that have been enjoined or finally adjudicated as infringing, provided that Contractor will:

- (i) refund to the State any prepaid Fees for Services that have not been provided; and
- (ii) fulfill its Transition Responsibilities.

(d) The remedies set forth in **Sections 13.1 and 13.2** are the State's sole remedies and Contractor's sole liability for any Action that does or is alleged to arise out of or result from a claim that any of the Services infringe, misappropriate or otherwise violate any Intellectual Property Right or other right of a third party.

13.3 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 reserves the right to control or participate in the defense to the extent required by law. In the event the State is legally required to control or participate in its own defense, it shall do so in good faith coordination with Contractor and an attorney designated by Contractor to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General. 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.

14. Limitations of Liability.

14.1 Disclaimer of Damages. Neither party will 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.

14.2 Limitation of Liability. In no event will one party's aggregate liability to the other party 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 paid under the applicable statement of work in the twelve (12) month period immediately preceding the event giving rise to such liability except for Sections 13.1 and 13.2 (Infringement Indemnification and Mitigation), for which the maximum liability shall be one million dollars (\$1,000,000) and Contractors obligations under **Section 9.5** (Loss or Compromise of State Data), for which the maximum liability shall be two million dollars (\$2,000,000).

15. Representations and Warranties.

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

- (a) it is duly organized, validly existing, and in good standing as a corporation or other entity as represented under this Contract under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;
- (b) it has the full right, power, and authority to enter into this Contract, to grant the rights and licenses granted under this Contract, and to perform its contractual obligations;
- (c) the execution of this Contract by its Representative has been duly authorized by all necessary organizational action;

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

(e) 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

(f) 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.

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

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

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

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

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

(e) the Service Software and Services will in all material respects conform to and perform in accordance with the Documentation, and all written information furnished to the State by or for Contractor relating to the Documentation, Contractor's ADA compliance and Contractor's Security White Paper 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;

(f) all Specifications are, and will be continually updated and maintained so that they continue to be, current, complete and accurate and so that they do and will continue to fully describe the Hosted Services in all

material respects such that at no time during the Term or any additional periods during which Contractor does or is required to perform the Services will the Hosted Services have any material undocumented feature;

(g) subject to the commercially reasonable efforts of Contractor, which shall be no less than industry standard, the Contractor Systems and Services are and will remain free of Harmful Code;

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

(i) Contractor will perform all Services in a timely, professional and workmanlike manner with a level of care, skill, practice and judgment consistent with generally recognized industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications;

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

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

15.3 State Representations and Warranties. The State represents and warrants to Contractor that:

(a) it has the full right, power, and authority to enter into this Contract, and to perform its contractual obligations;

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

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

15.4 DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES IN THIS CONTRACT, EACH PARTY HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE UNDER OR IN CONNECTION WITH THIS CONTRACT OR ANY SUBJECT MATTER HEREOF, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, TITLE AND MERCHANTABILITY AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE.

16. Insurance.

16.1 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 a company with an A.M. Best rating of "A-" or better and a financial size of VII or better.

Insurance Type	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.
Umbrella or Excess Liability Insurance	
<u>Minimal Limits:</u> \$5,000,000 General Aggregate	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds.
Workers' Compensation Insurance	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Privacy and Security Liability (Cyber Liability) Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate	Contractor must have their policy cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.

(b) Subject to the limitations of liability in section 14, 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, the 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 purchase 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.

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

17. Force Majeure.

17.1 Force Majeure Events. Subject to **Section 17.2**, neither party will be liable or responsible to the other party, or be deemed to have defaulted under or breached this Contract, for any failure or delay in fulfilling or performing any term hereof, when and to the extent such failure or delay is caused by: acts of God, flood, fire or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Contract, national or regional emergency, or any passage of law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition (each of the foregoing, a "**Force Majeure Event**"), in each case provided that: (a) such event is outside the reasonable control of the affected party; (b) the affected party gives prompt written notice to the other party, stating the period of time the occurrence is expected to continue; (c) the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

17.2 State Performance; Termination. In the event of a Force Majeure Event affecting Contractor's performance under this Contract, the State may suspend its performance hereunder until such time as Contractor resumes performance. The State may terminate this Contract by written notice to Contractor if a Force Majeure Event affecting Contractor's performance hereunder continues substantially uninterrupted for a period of ten (10) 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.

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

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

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

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

18. Effect of Contractor Bankruptcy. All rights and licenses granted by Contractor under this Contract are and shall be deemed to be rights and licenses to "intellectual property," and the subject matter of this agreement, including the Services, is and shall be deemed to be "embodiments" of "intellectual property" for purposes of and as such terms are used in and interpreted under section 365(n) of the United States Bankruptcy Code (the "**Code**") (11 U.S.C. § 365(n) (2010)). The State has the right to exercise all rights and

elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Contract (including all executory Statement of Works). Without limiting the generality of the foregoing, if Contractor or its estate becomes subject to any bankruptcy or similar proceeding, subject to the State's rights of election, all rights and licenses granted to the State under this Contract will continue subject to the respective terms and conditions of this Contract, and will not be affected, even by Contractor's rejection of this Contract.

19. General Provisions.

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

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

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

If to State:

State of Michigan
Department of Education
608 W. Allegan Street
PO Box 30008
Lansing, MI 48909

Attn: Ruth Thole, Buyer
TholeR@michigan.gov
517-373-3823

If to Contractor:

Qualtrics, LLC
333 W. River Park Dr.
Provo UT 84604

Attn: Legal
notice@qualtrics.com

Notices sent in accordance with this **Section 19.3** 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.

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

19.5 Assignment. Neither party may 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 other party's prior written consent; provided, however, that Contractor may assign this agreement without consent to its successor in a merger, acquisition or other change of control, including without limitation the sale of all or substantially all of its assets, stock or business to which this agreement relates, and provided, however, that no such prior written consent from Contractor is necessary in the event of a legislative mandate or executive order to transfer the agreement to another State agency. The State has the right to terminate this Contract in its entirety or any Services or Statements of Work

hereunder, pursuant to **Section 7.2**, if Contractor delegates or otherwise transfers any of its obligations or performance hereunder in violation of this **Section 19.5**, and no such delegation or other transfer will relieve Contractor of any of such obligations or performance. Any purported assignment, delegation, or transfer in violation of this **Section 19.5** is void.

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

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

19.8 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.

19.9 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.

19.10 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 could give rise to irreparable harm to the other party for which monetary damages could 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 seek 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.

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

19.12 Unfair Labor Practice. Under 1980 PA 278, MCL 423.321, *et seq.*, the State must not award a contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. This information is compiled by the United States

National Labor Relations Board. A contractor of the State, in relation to the contract, must not enter into a contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, the State may void any contract if, after award of the contract, the contractor as an employer or the name of the subcontractor, manufacturer or supplier of the contractor appears in the register.

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

Schedule A	Statement of Work
Schedule B	Service Level Agreement
Schedule C	Data Security and Disaster Recovery Requirements
Schedule D	Pricing Matrix

19.14 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.

19.15 Entire Agreement. This Contract, together with all Schedules, Exhibits, and the Statement of Work constitutes the sole and entire agreement of the parties to this Contract with respect to the subject matter 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 (A) 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 OR (B) THE STATE'S PURCHASE ORDERS OR OTHER NON-NEGOTIATED TERMS, IN EACH CASE, WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE PARTIES OR ANY AUTHORIZED USER FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE PARTIES AND THE AUTHORIZED USER, EVEN IF ACCESS TO OR USE OF SUCH SERVICE OR DOCUMENTATION REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

SCHEDULE A STATEMENT OF WORK CONTRACT ACTIVITIES

BACKGROUND

Qualtrics has developed a series of proprietary computer software programs that facilitate and automate the process of conducting surveys, polls, intercepts, and reports (the “**Software**”). Qualtrics provides its clients access to the Software as end users via an application service provider (ASP) model, in which Qualtrics uses, operates, and makes available the applicable software, network, systems, and other technologies in order to provide the Services (as defined below) to clients via the Internet and a web browser. Qualtrics utilizes the services of third party hosting facilities which are attested SSAE-16 SOC I Type II.

SCOPE

The Contractor will provide a subscription service agreement for accessing and utilizing Qualtrics survey program, a cloud-based online survey, reporting, and analysis tool.

The survey program will:

- Be user friendly to allow creation, testing, and modification of surveys with no coding required. System design tools shall allow display of individual sequences of questions or question blocks based on previous responses, or program conditions configured from an outside data source such as an uploaded spreadsheet. “Piped text” shall allow responses from earlier questions to affect the dynamic display of later questions.
- Allow upload of pre-existing data to populate a survey.
- Provide options for user permissions to control creating, modifying, or distributing surveys as well as limiting access by outside users.
- Provide real-time, precise measurement and capture of customer and stakeholder responses.
- Provide a dashboard system to display survey data to permissioned colleges and universities

REQUIREMENTS

1. Subscription Service:

For all purposes of this Contract, the term “Subscription Service” shall mean and refer to the specific version of the Qualtrics survey, poll, reviews, intercept, and reporting services specified herein and accessible at www.qualtrics.com.

The Contractor shall develop, maintain, and host the website that includes all survey, intercept, panel, and assessment development tools, e-mail delivery, online analysis tools, online libraries, tutorials and support facilities. System updates, disaster recovery backup, and maintenance are included.

Subscription service shall include:

- K-12 District Research Suite License Unlimited Responses
- One (1) Included Brand
- One (1) Included Theme
- Ten (10) Included Users
- API Feature
- Signature Question Type Feature
- Vocalize Solution with Unlimited Dashboarding
- Two (2) Administration Users

- Unlimited Number of Viewers
- Case Management

2. Subcontractor/Partner

The Contractor may use partners for certain portions of the Services.

3. Support and Training

See **Schedule B, Section 1.1.**

4. State's Responsibility

The State agrees to not reverse engineer or tamper with the security of the Software.

5. Authorizing Document

The appropriate authorizing document for the Contract will be a purchase order.

6. Price Term and Payment

6.1. Price Term

Price indicated on **Schedule D – Pricing Matrix** is firm for the initial term of the contract ending June 30, 2018. Price may increase at each renewal; however, the increase may not be greater than 5% at each renewal.

6.2. Payment

Payment terms are Net 60 Days following invoice. The State will make payment for Contract Activities via Electronic Funds Transfer (EFT).

SCHEDULE B

Service Level Agreement

Contractor Incident Response and Service Levels

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 Schedule shall have the respective meanings given to them in the Contract.

“Brand Administrator” means the person identified by the State to be responsible for administering the State’s account and its users.

1. Incident Response

1.1. Contractor will provide the following phone and email support: Qualtrics will provide online tutorials and respond to emails and phone calls 24 hours a day, 7 days a week, excluding major international holidays. Standard (non-custom) trainings are provided via webinars and other online training materials. The webpage www.qualtrics.com/support has training materials, support contact information and materials, and a portal to submit support tickets. Custom trainings can be provided upon request for an additional fee, either via online webinar or on-site. Fees for such custom training will be agreed to by Qualtrics and the State upon request.

1.2. An **“Incident”** is declared by Contractor when any of the following occurs:

- (a) A malfunction, disruption, or unlawful use of the Services;
- (b) The loss or theft of State Data from the Services;
- (c) Unauthorized access to State Data, information storage, or a computer system; or
- (d) Material delays or the inability to use the Service.

1.3. The Contractor’s response team is comprised of members of its support and engineering teams who have expertise in technical issues, network security, and the Service Software. The Engineer-on-call is available for emergency responses 24 hours a day 365 days a year.

1.4. An Incident involving the loss or unauthorized access of State Data, not due to the State’s errors or omissions, will always be categorized as Code Red. In such a case, the Brand Administrator will be notified as expeditiously as possible but no later than two (2) business days after a disclosure is discovered. A Contractor case manager will conduct a formal investigation, and will deliver an official written report to the Brand Administrator within two weeks of the Incident.

1.5. Response and resolution times are prioritized in the Incident Level Table below.

2. Service Levels

2.1. Availability. Contractor will use commercially reasonable efforts to ensure that the Subscription Services will be available 24 hours per day, 7 days per week (**“Availability”**), excluding when the Subscription Services are unavailable due to:

- (a) required system maintenance as determined by Contractor (**“Scheduled Maintenance”**); and

- (b) causes outside of the reasonable control of Contractor that could not have been avoided by its exercise of due care, including but not limited to, any outages caused by: (i) the failure of any third party vendors (e.g., ISP/data center); (ii) the Internet in general; (iii) a State-caused event; or (iv) any emergency or Force Majeure Event.

2.2. Scheduled Maintenance. A minimum of 5 days' advance notice will be provided by email to the Brand Administrator for all Scheduled Maintenance exceeding 2 hours. For Scheduled Maintenance lasting less than 2 hours, notice will be displayed on the login page.

2.3. Downtime. "Downtime" is defined as the Subscription Services having no Availability, expressed in minutes.

2.4. Remedies for Downtime. If Downtime exceeds a certain amount per month, the State will be entitled, upon written request, to a credit ("**Fee Credit**") based on the formula: Fee Credit = Fee Credit Percentage * (1/12 current annual Fees paid). All times listed immediately below are per calendar month.

- (a) If Downtime is 30 minutes or less, no Fee Credit Percentage is awarded.
- (b) If Downtime is from 31 to 120 minutes, the State is eligible for a Fee Credit Percentage of 5%.
- (c) If Downtime is from 121 to 240 minutes, the State is eligible for a Fee Credit Percentage of 7.5%.
- (d) If Downtime is 241 minutes or greater, the State is eligible for a Fee Credit Percentage of 10.0%.
- (e) If Downtime is 241 minutes or greater or Scheduled Maintenance is greater than 8 hours in any three consecutive months, the State is eligible for a pro-rated refund and may terminate this Contract for cause.

2.5. Fee Credits. Except as specified in Section 4e above, Fee Credits will be the State's sole and exclusive remedy in the event of any failure to meet the Availability and Scheduled Maintenance ("**Service Levels**"). Fee Credits will be payable to the State upon demand. The issuance of Fee Credits shall not however affect any right of the State to claim damages for Contractor's failure to meet any other obligations under the Contract.

Incident Level Table

<i>Incident Level</i>	<i>Typical Conditions</i>	<i>Resolution Response</i>
4	A minor issue affecting an individual user that may not be reproducible.	Addressed by support team for workaround or other resolution.
3	The problem is reproducible and has an impact on usability of the product, though a workaround exists to garner full functionality.	Addressed in a subsequent release in a reasonable timeframe.
2	A product is effectively unusable on a widespread basis; survey taking experience significantly affected.	Corrected as expeditiously as possible after code is developed and tested.
Code Red	Loss of a key functionality or access to Service. Data loss due to unauthorized access. A suspected/actual data breach or security threat. Survey taking severely hindered or impossible.	Full engineering efforts directed toward resolution. After hours, Engineer-on-call will be contacted and will work nonstop until resolution is met.

SCHEDULE C

Data Security and Disaster Recovery Requirements

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

1. Data Security. Throughout the Term and at all times in connection with its actual or required performance of the Services:

1.1 Contractor will implement and maintain industry standard data security measures designed to prevent unauthorized access to Data, and shall periodically review and update such measures. This includes leasing the services of secure hosting facilities that are independently audited SSAE-16. At a minimum, Contractor will provide the security measures documented in its Security White Paper, version 5.01, dated February 6, 2017, which will be updated as required only to reflect improved security and operational procedures. Contractor's Security White Paper, including updated versions, will be made available to MDE upon request.

1.2 Without limiting its obligations otherwise set forth herein, Contractor will comply with applicable laws relating to the storage, transmission, and disclosure of data.

1.3 Contractor will ensure that the Software is securely hosted, supported, administered, and accessed in a data center that resides in the continental United States.

1.4 Contractor will maintain and enforce an information security program including safety and physical and technical security policies and procedures to provide 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 consistent with best industry practice and standards.

1.5 Contractor will take all reasonable measures to:

(a) secure 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;

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

2.1 Contractor will maintain and operate a backup and disaster recovery plan (the "**DR Plan**") to ensure prompt and complete return to normalcy in the event of a disaster. At a minimum, the objectives of the DR Plan will be:

(a) to ensure that, in the event of a disaster: 1) usability is restored promptly with little or no disruption to users; and 2) data loss is avoided; and

(b) to achieve a Recovery Point Objective (RPO) of 4 hours, and a Recovery Time Objective (RTO) of 24 hours, and implement such DR Plan in the event of any unplanned interruption of the Hosted Services.

2.2 Summaries of Contractor's current DR Plan and confirmation of testing of the DR Plan will be made available upon request. Contractor will actively test, review and update the DR Plan using industry best practices as guidance.

**SCHEDULE D
PRICING MATRIX**

Deliverable	Price
<p>Subscription service agreement for:</p> <ul style="list-style-type: none">• K-12 District Research Suite License Unlimited Responses• One (1) Included Brand• One (1) Included Theme• Ten (10) Included Users• API Feature• Signature Question Type Feature• Vocalize Solution with Unlimited Dashboarding• Two (2) Administration Users• Unlimited Number of Viewers• Case Management <p>Price is lump sum for the period ending June 30, 2018.</p>	<p>\$ <u>56,400.00</u></p>