



STATE OF MICHIGAN
CENTRAL PROCUREMENT SERVICES
 Department of Technology, Management, and Budget
 525 W. ALLEGAN ST., LANSING, MICHIGAN 48913
 P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **3**

to

Contract Number **071B6600008**

CONTRACTOR	Eidex, LLC
	120 Ionia Ave SW
	Grand Rapids, MI 49503
	Charles McGrath
	616-303-0117
	cmcgrath@eidexinsights.com
	CV0052967

STATE	Program Manager	Jeff Kolb	MDE
		517-373-1908	
		kolbj2@Michigan.gov	
	Contract Administrator	Marcy Sims	DTMB
		(517) 275-1132	
		sims4@michigan.gov	

CONTRACT SUMMARY				
PRE-QUAL PROGRAM ANALYTICS TOOL FOR MI SCHOOL DISTRICTS				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE	
October 15, 2015	October 14, 2016	4 - 1 Year	October 14, 2018	
PAYMENT TERMS		DELIVERY TIMEFRAME		
ALTERNATE PAYMENT OPTIONS				EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other				<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1 year	<input type="checkbox"/>		October 14, 2019
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$1.00	\$0.00	\$1.00		
DESCRIPTION				
Effective 9/12/2018, the State is exercising the third of four option years. The revised contract expiration date is 10/14/2019. All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Procurement approval.				



STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget

525 W. ALLEGAN ST., LANSING, MICHIGAN 48913

P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **2**

to

Contract Number **071B6600008**

CONTRACTOR	Eidex, LLC
	120 Ionia Ave SW
	Grand Rapids, MI 49503
	Charles McGrath
	616-303-0117
	cmcgrath@eidexinsights.com
	*****9462

STATE	Program Manager	Jeff Kolb	MDE
		517-373-1908	
		kolbj2@Michigan.gov	
	Contract Administrator	Kim Harris	DTMB
		(517) 284-7016	
		harrisk16@michigan.gov	

CONTRACT SUMMARY				
PREQUAL ANALYTICS TOOL FOR MI SCHOOL DISTRICTS				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
October 15, 2015	October 14, 2016	4 - 1 Year	October 14, 2017	
PAYMENT TERMS		DELIVERY TIMEFRAME		
		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-Card		<input type="checkbox"/> Direct Voucher (DV)	<input type="checkbox"/> Other	<input checked="" type="checkbox"/> Yes <input 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"/>		October 14, 2018
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$1.00	\$0.00	\$1.00		
DESCRIPTION				

Effective 9/12/2017 the State exercises option year two of four. The revised contract expiration date is 10/14/2018. The following amendment is incorporated into this contract per attachment B. This a zero dollar value contract for reimbursements not to exceed \$1,500,000.00.

This Change includes the following:

Sec 102d of the School Aid Budget PA 249 of 2017 (Sec 102d has been revised; Intermediate district that purchase a school data analytical tool specifically for Intermediate finances and a school data analytical tool for the Constituent districts that opt in shall be reimbursed for both. The new language also adjusts the formula for reimbursement and revises the data by which schools must request reimbursement from MDE.

All other terms, conditions, specification, and pricing remain the same. Per contractor, agency, DTMB procurement and administrative board approval on September 12, 2017.

Attachment B:

Sec. 102d. (1) From the funds appropriated in section 11, there is allocated an amount not to exceed \$1,500,000.00 for 2017-2018 for reimbursements to districts and intermediate districts for the licensing of school data analytical tools as described under this section. The reimbursement is for districts and intermediate districts that choose to use a school data analytical tool to assist the district or intermediate district and that enter into a licensing agreement for a school data analytical tool with 1 of the vendors approved by the department of technology, management, and budget under subsection (2). Funds allocated under this section are intended to provide districts and intermediate districts with financial forecasting and transparency reporting tools to help improve the financial health of districts and to improve communication with the public, resulting in increased fund balances for districts and intermediate districts.

(2) Not later than October 15, 2017, the department of technology, management, and budget shall review vendors for school data analytical tools and provide districts and intermediate districts with a list of up to 2 approved vendors that districts and intermediate districts may use to be eligible for a reimbursement paid under this section. In addition, a vendor approved under this section for 2016-2017 is considered to be approved for use by a district or intermediate district and for reimbursement for 2017-2018. An approved school data analytical tool supplied by the vendor must meet at least all of the following:

- (a) Analyzes financial data.
- (b) Analyzes academic data.
- (c) Provides early warning indicators of financial stress.
- (d) Has the capability to provide peer district comparisons of both financial and academic data.
- (e) Has the capability to provide financial projections for at least 3 subsequent fiscal years.

(3) Funds allocated under this section shall be paid to districts and intermediate districts as a reimbursement for already having a licensing agreement or for entering into a licensing agreement not later than December 1, 2017 with a vendor approved under subsection (2) to implement a school data analytical tool. Reimbursement will be prorated for the portion of the state fiscal year not covered by the licensing agreement. However, a licensing agreement that takes effect after October 1, 2017 and before December 1, 2017 will not be prorated if the term of the agreement is at least 1 year. Reimbursement under this section shall be made as follows:

- (a) All districts and intermediate districts seeking reimbursement shall submit requests not later than December 1, 2017 indicating the cost paid for the financial data analytical tool.
- (b) The department shall determine the sum of the funding requests under subdivision (a) and, if there are sufficient funds, shall pay 1/2 of the costs submitted under subdivision (a). If there are insufficient funds to pay 1/2 of the costs submitted under (a), then reimbursement shall be made on an equal percentage basis.
- (c) Funds remaining after the calculation and payment under subdivision (b) shall be distributed on an equal per-pupil basis, with an intermediate district's pupils considered to be the sum of the pupil memberships of the constituent districts for which the intermediate district is purchasing the financial data analytical tool.

- (d) The reimbursement to a district or intermediate district shall not be greater than the amount paid for a data analytics application.
- (e) A district or intermediate district shall not be reimbursed for the purchase of more than 1 software application.
- (4) If an intermediate district purchases both a school data analytical tool specifically for intermediate district finances and a school data analytical tool for those constituent districts that opt in, the intermediate district shall be reimbursed for both purchases under this section.
- (5) If an intermediate district makes available to 1 or more of its constituent districts a school data analytical tool funded under this section, that constituent district shall not be reimbursed under this section for the purchase of that school data analytical tool if the constituent district has opted in for that tool.
- (6) Notwithstanding section 17b, payments under this section shall be made on a schedule determined by the department.



STATE OF MICHIGAN
ENTERPRISE PROCUREMENT
Department of Technology, Management, and Budget
525 W. ALLEGAN ST., LANSING, MICHIGAN 48913
P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number 1
to
Contract Number 071B6600008

CONTRACTOR	Eidex, LLC	STATE	Jeff Kolb	MDE
	120 Ionia Ave SW		517-373-1908	
	Grand Rapids, MI 49503		kolbj2@Michigan.gov	
	Charles McGrath		David Hatch	DTMB
	616-303-0117		(517) 284-7044	
	cmcgrath@eidexinsights.com		hatchd@michigan.gov	
	*****9462			

CONTRACT SUMMARY							
PREQUAL ANALYTICS TOOL FOR MI SCHOOL DISTRICTS							
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE				
October 15, 2015	October 14, 2016	4 - 1 Year	October 14, 2016				
PAYMENT TERMS		DELIVERY TIMEFRAME					
		N/A					
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING				
<input type="checkbox"/> P-Card	<input type="checkbox"/> Direct Voucher (DV)	<input type="checkbox"/> Other	<input checked="" type="checkbox"/> Yes	<input 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"/>		October 14, 2017			
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE					
\$1.00	\$0.00	\$1.00					
DESCRIPTION							
Effective 8/25/2016 the State is exercising the first option year. The revised contract expiration date is 10/14/2017. The following amendment is incorporated into this Contract per attachment A.							
This change includes the following:							
Sec 102d of the School Aid Budget PA 249 of 2016. (Section 102d has been revised; intermediate districts will be allowed to participate in the reimbursement). The new language also adjusts the formula for reimbursement and revises the date by which schools must request reimbursement from MDE.							
All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Procurement approval.							

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
525 W. ALLEGAN, LANSING, MI 48933

NOTICE OF CONTRACT NO. 071B6600008

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Eidex LLC 120 Ionia Ave. SW, Suite 201 Grand Rapids, MI 49503	Charles McGrath	cmcgrath@eidexinsights.com
	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
	(616) 303-0117	9462

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER	MDE	Jeff Kolb	(517) 373-1908	KolbJ2@michigan.gov
CONTRACT ADMINISTRATOR	DTMB - Procurement	Christine Mitchell	517-284-7020	Mitchellc4@michigan.gov

CONTRACT SUMMARY

DESCRIPTION:

Prequalification Program Contract for Licensing of Financial and Academic Data Analytics Tools for Michigan School Districts

<u>INITIAL TERM</u>	<u>EFFECTIVE DATE</u>	<u>INITIAL</u> EXPIRATION DATE	<u>AVAILABLE</u> OPTIONS
One Year	10/15/2015	10/14/2016	4, 1 Year
PAYMENT TERMS	F.O.B.	SHIPPED TO	
Net 45	Destination	NA	
<u>ALTERNATE PAYMENT OPTIONS</u>			<u>EXTENDED PURCHASING</u>
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS:

NA

MISCELLANEOUS INFORMATION:

This Contract is awarded from Request for Proposal (RFP) #007115B0005819 to establish a list of prequalified suppliers to provide licensing, installation and subscription services for financial and academic data analytics tools for Michigan public schools as detailed in the attached requirements, pricing, terms and conditions. This Contract executed to meet the requirements of the State School Aid Act, Section 102d.

Authority: Agency request and DTMB Procurement approval.

ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:	\$1.00 Established for MiDEAL Only.
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For the Contractor:

John R. Gunn,
Contract Administrator
Eidex Insights

Date

For the State:

Sharon Walenga-Maynard, Sourcing Director
DTMB Procurement
State of Michigan

Date



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 Eidex LLC ("Contractor"), a Michigan Limited Liability Company. This Contract is effective on 10/15/2015 ("Effective Date"), and unless earlier terminated, will expire on 10/15/2016 (the "Term").

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

1. Definitions.

"**Accept**" has the meaning set forth in **Section Error! Reference source not found..**

"**Acceptance**" has the meaning set forth in **Section Error! Reference source not found..**

"**Action**" has the meaning set forth in **Section 11.1.**

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

"**Allegedly Infringing Features**" has the meaning set forth in **Section Error! Reference source not found..**

"**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**" has the meaning set forth in **Section 4.**

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

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

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

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

"**Code**" has the meaning set forth in **Section Error! Reference source not found..**

"**Confidential Information**" has the meaning set forth in **Section Error! Reference source not found..**

"**Contract**" has the meaning set forth in the preamble, and is a Licensing Agreement or Subscription Agreement between a Participating Organization and Contractor.

"**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).**

"**Contractor Systems**" has the meaning set forth in **Section 9.3.**

"**Corrective Action Plan**" has the meaning set forth in **Section Error! Reference source not found..**



“Critical Service Error” has the meaning set forth in **Section Error! Reference source not found..**

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

“District” includes local districts, public school academies and the Education Achievement Authority. It does not include intermediate school districts (see MCL 388.1603).

“DR Plan” has the meaning set forth in **Section Error! Reference source not found..**

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

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

“Fees” has the meaning set forth in **Section 7.1.**

“Force Majeure Event” has the meaning set forth in **Section 14.1.**

“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.

“High Service Error” has the meaning set forth in **Section Error! Reference source not found..**

“HIPAA” has the meaning set forth in **Section Error! Reference source not found..**

“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.

“Licensing Agreement” means the Subscription Agreement” between the Contractor and the Participating Organization.

“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.

“Low Service Error” has the meaning set forth in **Section Error! Reference source not found..**

“Medium Service Error” has the meaning set forth in **Section Error! Reference source not found..**



Participating Organization – A school district, who by virtue of licensing Contractor’s Services, is eligible for reimbursement submission under this Contract

“Person” means an individual, corporation, partnership, joint venture, Limited Liability Company (LLC), governmental authority, unincorporated organization, trust, association or other entity.

“Personal Health Information (PHI)” has the meaning set forth in **Section Error! Reference source not found..**

“Personally Identifiable Information (PII)” has the meaning set forth in **Section Error! Reference source not found..**

“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.

“Reject” has the meaning set forth in **Section Error! Reference source not found..**

“Rejection” has the meaning set forth in **Section Error! Reference source not found..**

“Representatives” means a party’s employees, officers, directors, consultants, legal advisors and, with respect to Contractor, Contractor’s Subcontractors.

“Resolve” has the meaning set forth in **Section Error! Reference source not found..**

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

“Scheduled Downtime” has the meaning set forth in **Section 4.2.**

“Scheduled Uptime” means the total minutes in the Service Period.

“Service Availability Credits” has the meaning set forth in **Section Error! Reference source not found..**

“Service Error” means any failure of any Hosted Service to be Available or otherwise perform in accordance with this Contract and the Specifications.

“Service Level Credits” has the meaning set forth in **Section Error! Reference source not found..**

“Service Level Failure” means a failure to perform the Support Services fully in compliance with the Support Service Level Requirements.

“Service Period” has the meaning set forth in **Section 4.**

“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.

“Service Support Level Requirements” has the meaning set forth in **Section Error! Reference source not found..**

“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, and also includes all organizations referred to as “Participating Organizations” as defined in Schedule, A, the Statement of Work.

“**State Data**” has the meaning set forth in **Section Error! Reference source not found..**

“**State Modification**” has the meaning set forth in **Section Error! Reference source not found..**

“**State Project Manager**” has the meaning set forth in **Section Error! Reference source not found..**

“**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)**.

“**Subscription Agreement**” is synonymous with Licensing Agreement

“**Support Request**” has the meaning set forth in **Section Error! Reference source not found..**

“**Support Service Level Requirements**” has the meaning set forth in **Section Error! Reference source not found..**

“**Support Services**” has the meaning set forth in **Section 5**.

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

“**Transition Period**” has the meaning set forth in **Section 6.2**.

“**Transition Responsibilities**” has the meaning set forth in **Section 6.2**.

“**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 any Contract with a Participating Organization, Contractor will, in accordance with all terms and conditions set forth in any Contract with a Participating Organization, and corresponding Statement of Work, provide the Participating Organization 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 Participating Organizations and their Authorized Users (“**Hosted Services**”) as described Contractor’s standard Licensing/Subscription Agreement, a sample of which is included as **Schedule D**, to this Contract and by this reference are incorporated in and made a part of any individual Contract.

(b) service maintenance and the Support Services as set forth in **Section 5**, the applicable Subscription Agreement, and any incorporated Statements of Work; and

(c) such other services as may be specified in the purchasing agreement any school District may have entered into and paid for (a Licensing Agreement), on behalf of a Participating Organization, whether or not the Participating Organization executed the actual Licensing or Subscription Agreement on its own.



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 or Participating Organization may, at any time, increase or decrease the number of its licenses hereunder subject to a corresponding forward-going adjustment of the Fees to reflect these changes in accordance with the pricing set forth in the applicable Statement of Work.

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

2.3 Compliance With Laws. Contractor must comply with all applicable Laws as they concern any Contract with a Participating Organization 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, or Participating Organization 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.

2.5 Contractor Personnel. Contractor will:

(a) 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/Participating Organization'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.

(b) Contractor will remain responsible and liable for: (i) performance required in conjunction with any Contract with a Participating Organization, including the proper supervision, coordination and performance of its 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.



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.

2.7 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.

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

3.1 Service Preparation. Promptly upon the Contractor's' execution of a Subscription Agreement and/or Statement of Work, Contractor will take all steps necessary to make the Services procured thereunder ready and available for the Participating Organization's use in accordance with the Subscription Agreement or any other instrument executed between the Participating Organizations and the Contractor.

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

4.1 Availability Requirement. Contractor will make the Hosted Services Available, as measured over the course of each calendar month during the Term and any additional periods during which Contractor does or is required to perform any Hosted Services (each such calendar month, a "Service Period"), at least 99.95% of the time, excluding only the time the Hosted Services are not Available solely as a result of one or more Exceptions:

- (i) failures of the Participating Organization's or its Authorized Users' internet connectivity;
- (ii) internet or other network traffic problems other than problems arising in or from networks actually or required to be provided or controlled by Contractor; or
- (iii) Scheduled Downtime as set forth in Section 4.2.

4.2 Scheduled Downtime. Contractor must notify the Participating Organization at least twenty-four (24) hours in advance of all scheduled outages of the Hosted Services in whole or in part ("**Scheduled Downtime**")

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

5.1 Support Service Responsibilities. Contractor will:

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

(b) provide unlimited telephone support during the hours of 8 a.m. to 5 p.m. Eastern Time on Business Days;

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



- (d) Respond to and Resolve Support Requests as specified in this **Section 5**.

5.2 **Service Maintenance.** Contractor will continuously maintain the Hosted Services to optimize Availability that meets or exceeds the Availability Requirement. Such maintenance services include providing to Participating Organizations and Authorized Users:

- (a) all updates, bug fixes, enhancements, new releases, new versions and other improvements to the Hosted Services, including the Service Software, that Contractor provides at no additional charge to its other similarly situated customers; and
- (b) all such services and repairs as are required to maintain the Hosted Services or are ancillary, necessary or otherwise related to the State's or its Authorized Users' access to or use of the Hosted Services, so that the Hosted Services operate properly in accordance with this Contract and the Specifications.

6. Termination, Expiration and Transition.

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

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

(b) If the State terminates this Contract under this **Section 6.1**, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of this Contract, the termination will be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in **Section** Error! Reference source not found..

(c) The Participating Organization will only pay for amounts due to Contractor for Services accepted on or before the date of termination, subject to the Participating Organization's right to set off any amounts owed by the Contractor for the Participating Organization's reasonable costs in terminating this Contract. Contractor must promptly reimburse to the Participating Organization any Fees prepaid; prorated to the date of such termination.

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

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

- (a) Contractor will be obligated to perform all Transition Responsibilities specified in **Section 6.2**.

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



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

(d) Notwithstanding any provisions of this Contract or any Statement of Work to the contrary, upon the State's termination of this Contract or any Statement of Work for cause pursuant to **Section 6.1**, Participating Organizations will have the right and option to continue to access and use the Services under each applicable Subscription/Licensing Agreement or Statement of Work, in whole and in part, for a period not to exceed one hundred and eighty (180) days from the effective date of such termination pursuant to the terms and conditions of this Contract and each applicable Statement of Work and at a reduced rate.

6.4 Survival. The rights, obligations and conditions set forth in this and (Definitions), (Effect of Termination; Data Retention), (State Data), (Confidentiality), (Security), (Indemnification), (Limitations of Liability), (Representations and Warranties), (Insurance) and (Effect of Contractor Bankruptcy) and (General Provisions), and any right, obligation or condition that, by its express terms or nature and context is intended to survive the termination or expiration of this Contract, survives any such termination or expiration hereof.

7. Fees and Expenses.

7.1 Fees. Subject to the terms and conditions of any Contract/Purchase Order (PO) with a Participating Organization, this Contract and any applicable Statement of Work or Subscription Agreement, including the provisions of this **Section 7**. The Participating Organization shall pay the fees set forth in the applicable Subscription Agreement; and the State will reimburse the Participating Organization or qualified District that entered into a Contract on behalf of a Participating Organization, in accordance with any legislated provisions for it to perform such reimbursement. **(See Section 15.5 b for process)**.

7.2 Fees During Option Years. Contractor's Fees are fixed during the initial 1-year period of the Term. Contractor may increase Fees for any renewal period by providing written notice to the Participating Organization at least thirty (30) calendar days prior to the commencement of such renewal period. An increase of Fees for any renewal period may not exceed three percent (3%) of the Fees effective during the immediately preceding twelve (12) month period. No increase in Fees is effective unless made in compliance with the provisions of this **Section 7.2**.

7.3 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.

7.4 Taxes. Participating Organizations are 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 Participating Organizations 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 any Contract with Participating Organizations executed through this Contract agreement.

7.5 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 7**. During the Term, and for four (4) years after, upon the State's request, Contractor must make such books and records and appropriate personnel, including all financial information, available during normal business hours for inspection and audit by the State or its authorized representative, provided that the State: (a) provides Contractor with at least fifteen (15) days



prior notice of any audit, and (b) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Contractor's normal business operations.

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

8. State Data.

8.1 Loss or Compromise of Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, or integrity of any Participating Organization 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 any Participating Organization's Data, Contractor must, as applicable: (a) notify the Participating Organization as soon as practicable but no later than forty eight (48) hours of becoming aware of such occurrence; (b) cooperate with the Participating Organization in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required.

9. Security.

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

(a) ensure that the Service Software and all Participating Organization's Data is securely hosted, supported, administered, and accessed in a data center that resides in the continental United States

(b) maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of any Participating Organizations Confidential Information and, to the extent such practices and standards are consistent with and not less protective than the foregoing requirements, are at least equal to applicable best industry practices and standards;

(c) provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, transfer, commingling or Processing of such information that ensure a level of security appropriate to the risks presented by the Processing of any Confidential Information and the nature of such Confidential Information, consistent with best industry practice and standards.

9.2 Unauthorized Access. Contractor may not access, and shall not permit any access to, State or Participating Organization's Systems, in whole or in part, whether through Contractor's Systems or otherwise, without the State's or Participating Organizations express prior written authorization, unless it is normally publicly available information.

9.3 Contractor Systems. Contractor will be solely responsible for the information technology infrastructure, including all computers, software, databases, electronic systems (including database management systems) and networks used by or for Contractor ("**Contractor Systems**") and shall prevent unauthorized access.

10. Redundancy, Data Backup and Disaster Recovery. Contractor must provide redundancy, data backup and disaster recovery, in accordance with industry best practices and as follows.

10.1 **Redundancy, Data Backup and Disaster Recovery.** Contractor must, in accordance with the provisions of this section, maintain or cause to be maintained disaster avoidance procedures designed to safeguard State Data and the State's other Confidential Information, Contractor's Processing capability and the availability of the Hosted Services, in each case throughout the Term and at all times in connection with



its actual or required performance of the Services hereunder. The force majeure provisions of this Contract do not limit Contractor's obligations under this Section.

10.2 **Redundant Hosting and Connectivity.** Contractor will simultaneously operate a mirror system at a location in the United States that is geographically remote from the primary system on which the Service Software and Hosted Services are hosted. Except for its location, the mirror system must: (a) be identical in all respects to the primary system; (b) have hardware and software, network connectivity, power supplies, backup generators and other similar equipment and services that operate independently of the primary system; (c) have fully current backups of all the State Data stored on the primary system; and (d) have the ability to provide the Hosted Services in accordance with this Contract and the Specifications during the performance of routine and remedial maintenance or any outage or failure of the primary system fails. Contractor will operate, monitor and maintain such mirror system so that it may be activated within five (5) hours of any failure of the Hosted Services to be Available.

11. Indemnification.

11.1 **General Indemnification.** Contractor must defend, indemnify and hold harmless the State, Participating Organizations and State's agencies, departments, officers, directors, employees, agents contractors from and against all Losses arising out of or resulting from any third party claim, suit, action or proceeding (each, an "**Action**") that does or is alleged to arise out Services performed by virtue of its Licensing Agreement with any Participating Organization of or resulting from:

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

11.2 **Infringement Indemnification By Contractor.** Contractor must indemnify, defend and hold the State and any Participating Organization, and their agencies, departments, officers, directors, employees, agents, and contractors harmless from and against all Losses arising out of or resulting from any Action that does or is alleged to arise out of or result from a claim that any of the Services, or the Participating Organization's 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 activity deemed to be directly caused by the contractor.

11.3 Mitigation.

(a) If Contractor receives or otherwise learns of any threat, warning or notice alleging that all, or any component or feature, of the Services violates a third party's rights, Contractor must promptly notify the State and/or any Participating Organization of such fact in writing, and take all commercially reasonable actions necessary to ensure the continued right to access and use such Services and otherwise protect the State or Participating Organizations 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 herein, 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 Participating Organization 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 above are reasonably available with respect to the Allegedly Infringing Features then Contractor may direct the State and Participating Organizations to cease any use of any materials that have been enjoined or finally adjudicated as infringing, provided that Contractor will:

- (i) refund to the Participating Organization any prepaid Fees for Services that have not been provided; and
- (ii) in any case, at its sole cost and expense, secure the right for the Participating Organization to continue using the Allegedly Infringing Features for a transition period of up to six (6) months to allow the Organization to replace the affected Services or Allegedly Infringing Features without disruption.

(d) The remedies set forth in this **Section 11** are in addition to, and not in lieu of, all other remedies that may be available to the State and Participating Organizations under this Contract or otherwise, including the State’s/Participating Organization’s right to be indemnified.

11.4 Indemnification Procedure. The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations. The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense, at its own expense, if the State deems necessary. Contractor will not, without the State’s prior written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. Any litigation activity on behalf of the State or any of its subdivisions, under this **Section 10**, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

12. Contractor Representations and Warranties.

12.1 Authority and Bid Response. Contractor represents and warrants to the State and Participating Organizations, that:

- (a) it is duly organized, validly existing, and in good standing as a corporation or other entity as represented under this Contract under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;
- (b) it has the full right, power, and authority to enter into this Contract, to grant the rights and licenses granted under this Contract, and to perform its contractual obligations;
- (c) the execution of this Contract by its Representative has been duly authorized by all necessary organizational action;
- (d) when executed and delivered by Contractor, this Contract will constitute the legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with its terms;
- (e) the prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder to the RFP; and no attempt was made by Contractor to induce any other Person to submit or not submit a proposal for the purpose of restricting competition;



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

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

12.2 Software and Service Warranties. Contractor represents and warrants 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;

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

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

(e) the Service Software and Services will in all material respects conform to and perform in accordance with the Specifications and all requirements of this Contract.

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

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

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

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



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

(k) Contractor acknowledges that the State or its Participating Organizations 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.

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

13. Insurance.

13.1 Required Coverage.

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

Required Limits	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 insured's using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.
Automobile Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	



<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	
Professional Liability (Errors and Omissions) Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence \$2,000,000 Annual Aggregate <u>Deductible Maximum:</u> \$50,000 Per Loss	

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.

(b) 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.

(c) 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.

13.2 Non-waiver. This **Section 13** 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).

14. **Force Majeure.**

14.1 Force Majeure Events. 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.

(a) no Force Majeure Event modifies or excuses Contractor's obligations contained herein.

15. **General Provisions.**



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

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

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

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

If to Contractor:

120 Ionia Avenue, SW
Suite 201
Grand Rapids, MI 49503
E-mail: jgunn@eidexinsights.com
Attention: John R. Gunn
Title: Chief Executive Officer

If to the State:

Christine Mitchell
Buyer Specialist
DTMB Procurement
Mitchellc4@michigan.gov

Notices sent in accordance with this **Section 15.4** will be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail (with confirmation of transmission), if sent during normal business hours of the recipient, and on the next business day, if sent after normal business hours of the recipient; or (d) on the fifth (5th) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

15.5 Extended Purchasing Program. Upon written agreement between the State and Contractor, this Contract may be extended to: (a) MiDEAL members, (b) other states (including governmental subdivisions and authorized entities), MiDEAL members include local units of government and school districts.

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

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



STATE SCHOOL AID ACT SECTION 102d PAYMENT PROCESS

State School Aid Act Section 102d (MCL 388.1202d) appropriates \$1.5 million for reimbursements to school districts* for the licensing of school data analytical tools.

The following information must be provided to the Michigan Department of Education no later than December 15, 2015, by the successful bidder(s).

1. The District Code number of the districts (local, PSA or EAA) that have purchased a licensing agreement with the respective vendor
2. The District Name of the districts (local, PSA or EAA) that have purchased a licensing agreement with the respective vendor
3. The dollar amount of the respective agreement
4. The date of the licensing agreement

According to the language in Section 102d, reimbursement of the licensing agreement costs will be made to districts on an equal per pupil basis on a schedule determined by the Michigan Department of Education. Therefore, the funds will be distributed in a school aid payment subsequent to receipt of the above required information. No funds will be disbursed until all agreements have been obtained and the total pupil count can be determined.

The amount of the equal per-pupil reimbursements will fluctuate as the pupil counts are adjusted by audits and State School Aid Act Section 25e changes (MCL 1625e).

*The definition of the word "district" in Section 102d includes local districts, public school academies and the Education Achievement Authority. It does not include intermediate school districts (see MCL 388.1603). Consequently, if an intermediate has purchased the license for constituent districts, the funds will be paid to the constituent district.

MDE Contact for questions: Jeff Kolb - (517) 373-1908, KolbJ2@michigan.gov

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

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



15.8 Assignment. Contractor may not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Contract, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the State's prior written consent. The State has the right to terminate this Contract in its entirety or any Services, Licenses, Subscriptions, or Statements of Work hereunder, pursuant to **Section 6**, if Contractor delegates or otherwise transfers any of its obligations or performance hereunder, whether voluntarily, involuntarily, by operation of law or otherwise, and no such delegation or other transfer will relieve Contractor of any of such obligations or performance. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Contractor (regardless of whether Contractor is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Contract for which the State's prior written consent is required. Any purported assignment, delegation, or transfer in violation of this **Section 15.8** is void.

15.9 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.

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

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

15.12 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.

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

15.14 Schedules. All Schedules 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	General Company Information
Schedule C	Pricing
Schedule D	Licensing/Subscription Agreement/Privacy Policy

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



SCHEDULE A **Statement of Work**

1.000 Project Identification

1.001 PROJECT REQUEST AND BACKGROUND

This Contract is to provide for licensing, and installation of financial and academic data analytics tools for Participating Organizations within the Michigan school system to fulfill the requirements of Section 102d, of Public Act (PA) 85 of 2015. Tools provided must be capable of utilizing financial and academic data available on publicly accessible Websites from municipalities, local and intermediate Participating Organization “Districts” and/or the Michigan Department of Education to provide analytics and reports detailing fiscal and academic stress indicators to be used as an early warning mechanism for Participating Organizations.

For purposes of this Contract, “Participating Organizations” includes the following:

1. Local School Districts,
2. Public School Academies, and
3. Education Achievement Authority (EAA).

For the purposes of reimbursement under this Contract, Participating Organizations will be classified as Districts. The definition of the word “**District**” in Section 102d includes local districts, public school academies and the Education Achievement Authority. It does not include intermediate school districts (see MCL 388.1603). Consequently, if an intermediate has purchased the license for constituent districts, the funds will be paid to the constituent district.

1.100 Scope of Work and Deliverables

1.101 IN SCOPE

- Contractor must provide a web service, only requiring a browser to login and begin use. It is pre-loaded with all the information required as per the Contract specifications.
1. Contractor data analytical tool(s) must:
 1. Analyze financial data
 2. Analyze academic data
 3. Provide early warning indicators of financial stress
 4. Have the capability to provide peer district comparisons of both financial and academic data
 5. Have the capability to provide financial projections for at least 3 subsequent fiscal years
 2. Licensing agreements with approved vendors must be in place no later than December 1, 2015 for a Participating Organization to qualify for reimbursement under this program; however, Participating Organizations do not need to use the State negotiated contracts to be eligible. Reimbursements shall be made on a schedule determined by the department. (See Terms and Conditions, Section 15.5b).
 3. In accordance with the Standard Terms and Conditions this Contract will be made available to Districts.

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

1.102 OUT OF SCOPE

Custom development of new tools and applications.

1.103 ENVIRONMENT

Look and Feel Standard

All software items provided by the Contractor must be ADA complaint.



Agency Specific Technical Environment

Will be addressed as required for individual tool implementations.

1.104 WORK AND DELIVERABLES

I. Services and Deliverables To Be Provided

Contractor must have tools available for licensing and purchase by December 1, 2015.

A. Business Requirements

Contractor tool(s) must be capable of being effectively used by Participating Organizations to analyze available financial and academic data as an “early warning” system to allow for proactive remedy or avoidance of approaching financial or academic stressors.

To effectively assist districts in assessment, the data must be provided at the following level of detail to the extent possible:

- Program level,
- Grade level, and
- Grant level.

Deliverable(s)

1. Contractor's Financial and Academic Data Tool Functionality for a district must include, but is not limited to the following:
 - Analyzes financial and academic data
 - Available from: <https://www.mischooldata.org/>
 - Assistance from: helpdesk@misd.net
 - Provides early warning indicators of financial stress
 - Provide peer district comparisons of financial/academic data
 - Provide financial projections for at least three subsequent years
 - Pupil Enrollment
 - Fund balance trends
 - Fund balance as a % of revenues/expenditures
 - Resident students utilizing charter schools or schools of choice
 - Student/teacher ratio
 - Revenues/expenditures per pupil
 - Operations/maintenance, transportation, and workers' compensation costs
 - Debt service per student
 - Foundation allowance
 - Graduation and dropout rates
 - Number of priority/focus schools
 - Achievement results (proficiency scores)
2. **As an Option, Contractors are encouraged to Include:**
 - Display multiple years of publically accessible data
 - User ad hoc reports
 - Public viewing access
 - Short-term borrowing as a % of school aid
 - Integrated budget transparency tool
 - District has ability to post financial documents as required by legislation
 - Easy to use



- Housing market data
 - Housing and Urban Development – <http://www.huduser.org/>
 - National Center for Education Statistics – <https://nces.ed.gov/>

The system tool shall provide configurable access to “early warning” data analysis and academic data relevant to financial decision making.

- Data for use with the tool will come from several different sources, in different formats, and at different times throughout the year. Data Sources are listed in table format after the list of functional requirements for each category above.
- The tool shall provide graphical displays, as defined by the Participating Organization, of various metrics such as current year data, 5-year trend data, and comparison capabilities within and without a local unit or public Participating Organization.
-

Contractor Commitment:	<p>1) Eidex Focus is an existing analytics program developed specifically for school districts. It allows for the analysis of financial, academic, and demographic data, both current and historical, and allows for cross-referencing of the data sets. We pre-load the data for our clients based on state- and client-provided data.</p> <p>2) Eidex updates the software both when new functionality is available and when new data sources are available. In 2015 we have had six updates, including 3 major feature releases, the most recent of which occurred on September 10th.</p> <p>3) Eidex Focus offers specific lenses for evaluating data, beyond what is discussed in response #1. For example, we offer the ability to create custom peer groups, to use school choice data to evaluate the academic performance of overlapping schools, and to explore Staffing costs on a per teacher basis. For most analyses, both charts and tabular data are available.</p>
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3. In the event of Contract expiration or termination, all data must be provided by Contractor to Participating Organization within five (5) business days of request in a mutually agreeable format. All data has to be removed from any Contractor system(s) and all backups must be given to the Participating Organization in a mutually agreeable format. Upon termination, the Contractor must remove all association with the Participating Organization and from the applicable websites.

Contractor Commitment:	We agree to remove any data that is custom to the PO, but since the bulk of the data is state-published, it is not practical for us to remove all references to the PO, or to its data.
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4. The Contractor shall perform the following System Testing and Miscellaneous Support:

- a. The Contractor must have tools and staff in place to monitor that the system is up and available as expected.

Contractor Commitment:	Our server availability is monitored through system status checks. These checks are run every minute by Amazon's EC2 service and triggers are set to alert us to errors in the server. Key system processes are monitored using email notifications triggered by the system's attempt to recover a process after failure.
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B. Training

Vendor must provide training in tool operation, data queries, analysis and reporting.

Deliverable(s)

Training shall provide users with the knowledge of how to utilize the system on a day to day basis.

Contractor Commitment	1) Our standard training model is web-based, using AnyMeeting or other conferencing software. For clients with multiple licenses, we offer the option of on-site training. We also host regional user groups, provide a getting started manual, and offer webinars to introduce new features and provide refresher sessions. 2) As noted above, we use AnyMeeting as our primary mechanism for web training, although we support other software, e.g., Google Hangouts.
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C. Operation Services

Deliverable(s)

1. Participating Organizations use the latest versions of Microsoft Internet Explorer version Safari, Chrome, or Firefox, and two previous version prior and must be viewable through mobile devices. No additional software or hardware will be required for the public customer and the customer may wish to choose the format of the reports in HTML, PDF, XLS, or CSV.

Contractor Commitment	Our product meets the requirement to support the latest versions of Microsoft browsers (including Edge), Safari, Chrome, and Firefox, as well as two prior versions of these browsers. Reports are available to users of the core software in XLS, CSV and (for charts) PNG formats. PDF export is available in suitably configured browsers.
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2. The system response time for the end-user should not be excessively long. Response time must be on average three (3) seconds and in no circumstances longer than ten (10) seconds.

Contractor Commitment	Our response times fall inside the State's acceptable ranges. In general, our clients describe the software's performance as "fast" and "responsive."
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3. Availability

Contractor Commitment	Our system has consistently performed with minimal unscheduled downtime, maintaining greater than 99.9% availability in the past calendar year, <i>including</i> scheduled downtime. We measure availability using standard metrics, including scheduled outage time, unscheduled outage time, and a system for measuring the complexity of events that affect system availability in order to build a model for estimating downtime in response to future events. We guarantee 99.5% uptime.
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D. Maintenance and Support

Deliverable(s)

1. All new releases to tool purchased will be provided at no additional cost during the term of the Contract and shall be include in the maintenance costs.

Contractor Commitment	We would like to reserve the right to add significant new functionality as an optional component of the software. All existing functionality, many new functions, and all data updates, will be released at no additional cost during the term of the contract.
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1. Contractor process for managing scheduled downtime.

Contractor Commitment	Scheduled downtime is rare, and is handled outside of normal business hours at times when no client is using the software.
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3. The Contractor will provide telephone support (technical and non-technical) to the Participating Organization as part of the cost of licensing the tool.

Contractor Commitment	We have multiple staffers tasked with customer support, both via phone and email. We respond to emergency requests immediately. Other requests are addressed within the hour, and usually much faster.
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1.200 Roles and Responsibilities

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

I. Contractor Staff

The Contractor must identify a Single Point of Contact (SPOC). The duties of the SPOC shall include, but not be limited to:

- supporting the management of the Contract,
- facilitating dispute resolution, and
- advising the State of performance under the terms and conditions of the Contract.

The State reserves the right to require a change in the current SPOC if the assigned SPOC is not, in the opinion of the State, adequately serving the needs of the State.

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

Contractor has identified the following individual as the SPOC:			
Name	Title	Email	Phone
Charles McGrath	Chief Experience Officer	cmcgrath@eidexinsights.com	(616) 303-0117

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

I. State Program Manager- (MDTMB and Agency)

MDE will provide a Program Manager who will be responsible for the State's day to day Contract activities and will coordinate with the Contractor in addressing any issues which may arise.

The State's Program Manager will provide the following services:

- Facilitate communication between different Participating Organizations
- Resolve project issues
- Escalate outstanding/high priority issues
- Utilize change control procedures
- Conduct regular and ongoing review of the project to confirm that it meets original objectives and requirements

Name	Agency/Division	Title
Jeff Kolb	MDE	Program Manager



1.300 Project Plan

1.301 REPORTS

Reporting formats must be submitted to the State's Program Manager for approval within 5 business days after the execution of the contract(s) resulting from this RFP. Once both parties have agreed to the format of the report, it shall become the standard to follow for the duration of the contract.

- Required Report:
 - List of Schools who have purchased the tool, provided monthly through December, 2015.

Contractor Commitment:	Unless otherwise requested by the State, we intend to provide requested reports in Excel format.
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1.400 Project Management

1.401 CHANGE MANAGEMENT

Change management is defined as the process to communicate, assess, monitor, and control all changes to system resources and processes. The State also employs change management in its administration of the Contract.

If a proposed contract change is approved by the Agency, the Program Manager will submit a request for change to the Department of Technology, Management and Budget, Procurement Buyer, who will make recommendations to the Director of DTMB-Procurement regarding ultimate approval/disapproval of change request. If the DTMB Procurement Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the DTMB-Procurement Buyer will issue an addendum to the Contract, via a Contract Change Notice. **Contractors who provide products or services prior to the issuance of a Contract Change Notice by the DTMB-Procurement, risk non-payment for the out-of-scope/pricing products and/or services.**

The Contractor must employ change management procedures to handle such things as "out-of-scope" requests or changing business needs of the State while the migration is underway.

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

1.500 Acceptance

1.501 FINAL ACCEPTANCE

No installation is necessary for the product, and POs do not have specific versions of the software. In general, acceptance by the PO is indicated by signing of a purchase agreement.

1.600 Compensation and Payment

1.601 COMPENSATION AND PAYMENT

Prices shall remain firm for the duration of this Contract agreement and are listed in Schedule C.

- The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract by the Participating Organization.

Invoicing

Contractor will submit properly itemized invoices to the address included in the Bill To field on the Purchase Order issued against this Contract.



SCHEDULE B - GENERAL COMPANY INFORMATION

1. Company Contact Information.	
Sole contact during the RFP process. Include the name, title, and contact information (address, e-mail and phone number).	<p>Charles McGrath Chief Experience Officer 120 Ionia Ave. SW Suite 201 Grand Rapids, MI 49503</p> <p>cmcgrath@eidexinsights.com (616) 303-0117</p>
Sole contact authorized to receive and sign any resulting Contract.	<p>Jack Gunn Chief Executive Officer 120 Ionia Ave. SW Suite 201 Grand Rapids, MI 49503</p> <p>jgunn@eidexinsights.com (616) 648-2040</p>
2. Company Background Information.	
Legal business name and address.	<p>Eidex LLC 120 Ionia Ave. SW Suite 201 Grand Rapids, MI 49503</p>
What State is your business incorporated in?	Michigan
Phone number.	(616) 648-2040
Website address.	http://www.eidexinsights.com
3. Principal Place of Business.	
The Contractor must identify the location (city, state and zip code) that would have primary responsibility for this account if awarded a contract.	Grand Rapids, Michigan 49503



SCHEDULE C PRICING

1. The Contractor must provide a pricing schedule for the proposed Contract Activities. The pricing schedule should be submitted in a modifiable format (e.g., Microsoft Word or Excel); however, you may also submit an additional pricing schedule in a non-modifiable format (e.g., PDF). Failure to complete the pricing schedule as requested may result in disqualification of your proposal.
2. Price proposals must include all costs, including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State (e.g., shipping and handling, per piece pricing, and palletizing).
3. The Contractor is encouraged to offer quick payment terms. The number of days must not include processing time for payment to be received by the Contractor's financial institution.
4. By submitting its proposal, the Contractor certifies that the prices were arrived at independently, and without consultation, communication, or agreement with any other Contractor.

Eidex Focus Pricing

Student Count	Per student	Licensing (one license)	Addtl. License (each)
1000	Minimum pricing	\$3,000	\$250
5000	\$ 2.00	\$10,000	\$250
10,000	\$ 2.00	\$20,000	\$250

Eidex licensing is based on \$2.00 per-student, with a minimum price of \$3,000. That price includes one license, which is sufficient for many districts. Additional licenses may be purchased at \$250/license.



**SCHEDULE D
CONTRACTORS DOCUMENTS**

Attachment 2 - SUBSCRIBER LICENSE AGREEMENT

EIDEX LLC

AUTHORIZED USER LICENSE AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY. YOU HAVE BEEN REGISTERED AS AN AUTHORIZED USER OF EIDEX FOCUS BY YOUR SUBSCRIBER WHO HAS A LICENSE TO ACCESS AND USE EIDEX FOCUS. BY ACCESSING AND USING ALL OR ANY PORTION OF THE EIDEX FOCUS SOFTWARE ONLINE, YOU (HEREINAFTER "AUTHORIZED USER") ACCEPT ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT AND YOUR SUBSCRIBER'S LICENSE AGREEMENT, INCLUDING WITHOUT LIMITATION THE PROVISIONS ON LICENSE RESTRICTIONS IN SECTION 2, RESERVATION OF RIGHTS IN SECTION 5, AND THE LIMITATION OF LIABILITY IN SECTION 7. AUTHORIZED USER AGREES THAT THIS AGREEMENT IS LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY AUTHORIZED USER. THIS AGREEMENT IS ENFORCEABLE AGAINST AUTHORIZED USER. IF AUTHORIZED USER DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, AUTHORIZED USER MAY NOT USE THE EIDEX SOFTWARE AND MAY BE SUBJECT TO OTHER ENFORCEMENT PROVISIONS HEREIN.

As an AUTHORIZED USER, you seek access to the data and content and use of the software code in the EIDEX FOCUS software (hereinafter "LICENSED CONTENT") provided by Eidex LLC (hereinafter "EIDEX") at an online website (hereinafter "LICENSED SITE"). EIDEX wishes to grant you access to the LICENSED SITE, but your use of the LICENSED CONTENT is limited by the terms of this AGREEMENT.

1. Access and LICENSE. EIDEX agrees to provide AUTHORIZED USER online access via the LICENSED SITE to the LICENSED CONTENT at any time and any place for so long as AUTHORIZED USER remains registered with EIDEX, the associated SUBSCRIBER'S LICENSE AGREEMENT is in force, and the terms of this AGREEMENT are not breached. Access will be granted via a user ID and credentials, which may include a password and one or more security questions. EIDEX grants a revocable, limited, nonexclusive, non-transferable license to use the LICENSED CONTENT to generate LICENSED OUTPUT. LICENSED OUTPUT includes but is not limited to Internet web page reports, spreadsheets, graphs, charts, tables, documents and other materials, whether in printed, electronic or any other form, that contain copies of all or part of the LICENSED CONTENT or information generated by the LICENSED CONTENT, together with any works derived from such information. All rights not expressly granted to AUTHORIZED USER in this AGREEMENT are reserved.

2. Limitations on Access and Use. AUTHORIZED USER will not, without the express prior written consent of EIDEX:

(a) Provide any false personal information, or create an account for anyone other than the AUTHORIZED USER or allow any other person to use the user ID and credentials of the AUTHORIZED USER to access and/or use the LICENSED CONTENT or the LICENSED SITE;

(b) Use the LICENSED CONTENT, the LICENSED SITE, or both for any purpose other than for the business and purpose of the SUBSCRIBER;



- (c) Disclose any of the LICENSED CONTENT or LICENSED OUTPUT to any third party except in furtherance of the business and purpose of the SUBSCRIBER, and then only to the extent necessary and only in a physical print or a static electronic image, (e.g., .pdf format);
- (d) Sell any of the LICENSED CONTENT or LICENSED OUTPUT to any third party;
- (e) Gather, or attempt to gather, by any automated means, including "screen scraping" or "database scraping," factual content or any other portion of the LICENSED CONTENT from the LICENSED SITE;
- (f) Aggregate or distribute more than an insubstantial portion of the LICENSED CONTENT;
- (g) Reverse-engineer, decompile, translate, disassemble or separate the LICENSED CONTENT, including but not limited to viewing or otherwise obtaining HTML source code;
- (h) Encourage or facilitate any other AUTHORIZED USER's breach of the terms of this AGREEMENT;
- (i) Attempt to defeat, modify or work around any security devices protecting the LICENSED CONTENT, the LICENSED SITE, or the LICENSED OUTPUT, including, but not limited to, any attempt to probe, scan or test the vulnerability of the LICENSED CONTENT, or the LICENSED SITE;
- (j) Assign or delegate this AGREEMENT or any obligations, rights, or duties hereunder (this AGREEMENT is personal to the AUTHORIZED USER); or
- (k) Employ the LICENSED CONTENT, the LICENSED SITE, or both for any unlawful purpose.

3. Attribution. AUTHORIZED USER will ensure that any LICENSED OUTPUT distributed by AUTHORIZED USER under the terms of this AGREEMENT shall bear the following legend:

"© Eidex LLC 2014. All rights reserved. The information contained herein: (1) is proprietary to Eidex LLC and/or its content providers; (2) may not be copied, adapted, reproduced, or distributed; and (3) is not warranted to be accurate, complete, or timely. Neither Eidex LLC nor its affiliates or content providers are responsible for any damages or losses arising from any use of this information, content, or programs."

It shall not be a violation of this AGREEMENT for the AUTHORIZED USER to change the year "2014" in the legend in the previous paragraph to the then current calendar year.

4. Ownership. AUTHORIZED USER acknowledges that EIDEX owns all right, title, and interest in the copyrights and other intellectual property rights in the LICENSED CONTENT, the LICENSED SITE, and the LICENSED OUTPUT, and that any rights of AUTHORIZED USER or the SUBSCRIBER to the LICENSED CONTENT, the LICENSED SITE, or the LICENSED OUTPUT arises solely from this AGREEMENT. Any trademark, logo, and service mark, including but not limited to the name and word mark: "EIDEX" and "EIDEX FOCUS" and the design mark: "EIDEX" and "EIDEX FOCUS" (hereinafter "MARK"), whether registered or unregistered, appearing on the LICENSED CONTENT, the LICENSED SITE, or the LICENSED OUTPUT is owned by EIDEX or others. Neither this AGREEMENT nor use of the LICENSED CONTENT, the LICENSED SITE, or the LICENSED OUTPUT grants any right to use any Mark apart from its use on the LICENSED CONTENT, the LICENSED SITE, or the LICENSED OUTPUT.



5. **Reservation of rights.** EIDEX reserves, *inter alia*, the rights (1) to revoke this LICENSE to access and/or use the LICENSED CONTENT or the LICENSED SITE immediately, without notice, in the event of a breach of any provision of this AGREEMENT by the AUTHORIZED USER, (2) to change, limit, or discontinue any aspect, content, tool, or feature that is a part of the LICENSED CONTENT or the LICENSED SITE, (3) to audit and monitor use of the LICENSED CONTENT or the LICENSED SITE by the AUTHORIZED USER, including but not limited to IP address access and excess bandwidth use for assurance of compliance with the terms of this AGREEMENT, and (4) to investigate violations of security that may result in civil or criminal liability and to cooperate with law enforcement authorities in prosecuting any AUTHORIZED USER who is involved in such violations.

6. **Disclaimers.** EIDEX provides the LICENSED CONTENT and the LICENSED SITE on an “as is,” “as available” basis. EIDEX makes no warranty as to the accuracy, correctness, completeness, currency, timeliness, or reliability of the LICENSED CONTENT or to accessibility to the LICENSED CONTENT or the LICENSED SITE, including no guarantee of up-time or any lack of access to the LICENSED CONTENT or the LICENSED SITE by the AUTHORIZED USER. Factual material in the LICENSED CONTENT may contain errors and is subject to revision at all times. EIDEX disclaims all warranties or conditions, express or implied, including, but not limited to the implied warranties or conditions of merchantability, satisfactory quality, fitness for a particular purpose, quiet enjoyment, accuracy of informational content, and absence of viruses and damaging or disabling code.



7. **Limitations and exclusions of liability.** Under no circumstances shall EIDEX be liable for any direct, indirect, incidental, special, consequential, exemplary, or punitive damages that result from the use of, or inability to use, the LICENSED CONTENT, or the LICENSED SITE, or both, including, but not limited to loss of, or damage to, records or information of any AUTHORIZED USER, any SUBSCRIBER and/or any third parties, or any damages suffered or claimed by any such person(s) based on any third party claim related to use of the LICENSED CONTENT, or the LICENSED SITE, or both. AUTHORIZED USER is solely responsible for (1) the manner by which AUTHORIZED USER accesses and uses the LICENSED CONTENT and the LICENSED SITE hereunder, (2) the results obtained (or not obtained) from such access or use; and (3) any damages any AUTHORIZED USER, any SUBSCRIBER and/or any third parties arising from access and/or use of the LICENSED CONTENT and the LICENSED SITE.

8. **General terms.**

(a) **Term and termination.** In the event of termination of this AGREEMENT for any reason, or in the event of termination of the associated SUBSCRIBER'S LICENSE AGREEMENT, the LICENSE hereunder immediately terminates, and AUTHORIZED USER will discontinue accessing and attempting to access the LICENSED CONTENT and the LICENSED SITE. The terms of sections 2, 4, 5, 6 and 7 of this AGREEMENT shall survive its termination.

(b) **Injunctive Relief.** AUTHORIZED USER acknowledges that the EIDEX's legal remedies (including the payment of damages) may not be sufficient in the event of any breach of any provisions of this AGREEMENT by AUTHORIZED USER including, but not limited to, those related to the ownership, use, copying, distribution, or nondisclosure of the LICENSED CONTENT, the LICENSED SITE, or the LICENSED OUTPUT, and that EIDEX may suffer continuing and irreparable injury to its business as a direct result of such breach. Therefore, in the event of any such breach, EIDEX may seek any injunctive relief necessary to prevent or cure such breach (including temporary and preliminary relief, and relief by order of specific performance), without notice or the need to post bond.

(c) **Indemnification.** AUTHORIZED USER will defend, indemnify and hold EIDEX harmless from and against any and all liability, damages, loss or expense (including reasonable fees of attorneys and other professionals) in any claim, demand, action or proceeding initiated by any third-party against EIDEX arising from any acts of AUTHORIZED USER, including without limitation violating this or any other agreement or any law.

(d) **Integration and severability.** This AGREEMENT contains the entire understanding of the parties and supersedes all previous oral and written agreements on the subject matter hereof. Each provision of this AGREEMENT is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect.

(e) **Severability.** If any provisions of this AGREEMENT shall be held to be invalid, illegal or unenforceable, such provisions shall be modified, or if not possible, severed, to reflect the fullest valid, legal and enforceable expression of the intent of the parties and the remainder of this AGREEMENT shall not be affected thereby.

(f) **Governing law.** This AGREEMENT shall be governed by, and construed in accordance with, the laws of the State of Michigan applicable to contacts made and performed in Michigan, but without regard to the choice of law and conflicts of law provisions thereof. The parties hereby agree that any dispute under this AGREEMENT shall have its forum in the state or federal courts located in Kent County, Michigan, in the United States of America, and the parties hereby consent to personal jurisdiction therein and expressly waive any defenses to personal jurisdiction, including *forum non conveniens*.