



**STATE OF MICHIGAN
ENTERPRISE PROCUREMENT**

Department of Technology, Management, and Budget
525 W. Allegan, Lansing MI 48913
P.O. Box 30026, Lansing, MI 48909

NOTICE OF CONTRACT

CONTRACT NO. **186B7700001**
between
THE STATE OF MICHIGAN
and

CONTRACTOR	ForeSee Results, Inc.
	2500 Green Rd. Suite 400
	Ann Arbor, MI 48105
	Rick Jacobson
	734-205-2635
	Rick.jacobson@foresee.com
	3125

STATE	Program Manager	Amy Hiltunen	TIA/WDA
		517-373-9217	
		Hiltunena@michigan.gov	
STATE	Contract Administrator	Amanda Bright McClanahan	TED/TIA
		517-373-9190	
		amanda@michigan.org	

CONTRACT SUMMARY		
DESCRIPTION: Workforce Development Agency - Pure Michigan Talent Connect (PMTc) Web Survey		
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS
10/1/2016	9/30/2019	Two, One Year Options
PAYMENT TERMS		DELIVERY TIMEFRAME
NET 45		N/A
ALTERNATE PAYMENT OPTIONS		EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS		
N/A		
MISCELLANEOUS INFORMATION		
N/A		
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION		\$211,500.00

FOR THE CONTRACTOR:

ForeSee Results, Inc.

Company Name

Authorized Agent Signature

Cara Edwards, VP and General Counsel

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Amanda Bright McClanahan, CFO

Name & Title

Talent and Economic Development

Agency

Date

STATE OF MICHIGAN

Contract No. 186B7700001
Pure Michigan Talent Connect (PMTCC) Web Survey

SCHEDULE A STATEMENT OF WORK CONTRACT ACTIVITIES

PROJECT REQUEST

The Contractor is providing a web-based survey and consulting services necessary to survey customers using Pure Michigan Talent Connect (www.mitalent.org) for the Workforce Development Agency (WDA) within the Talent Investment Agency (TIA), Michigan Department of Talent and Economic Development (TED)

BACKGROUND

The Talent Investment Agency (TIA) was created in March 2015 to address the gap between workers with the right skills and employers in need of highly skilled workers for the jobs of today and tomorrow. TIA joins the efforts of the Workforce Development Agency and the Unemployment Insurance Agency to integrate new workers into the economy and help those workers that have been in or out of the workforce transition into new jobs. TIA coordinates programs related to job preparedness, career-based education, worker training, employment assistance and unemployment insurance. TIA, along with the Michigan State Housing Development Authority, Michigan Economic Development Corporation and the Michigan Strategic Fund, are part of the Michigan Department of Talent and Economic Development.

The Workforce Development Agency (WDA) is the state agency responsible for ensuring that Michigan has a skilled workforce to meet the needs of Michigan's employers. The WDA works in collaboration with other state agencies and stakeholders, as well as the Michigan Works! Agencies, to develop, retain, attract and match talent to career opportunities in Michigan.

Pure Michigan Talent Connect (www.mitalent.org) is an online marketplace connecting Michigan's job seekers and employers, and serves as a central hub linking all public and private stakeholders who support Michigan's workforce. Pure Michigan Talent Connect serves as the State's labor exchange system.

To solicit feedback about the site and measure customer satisfaction, WDA has provided a web-based survey to its users since the site was launched in 2011. Trends in satisfaction are monitored and survey results are used to drive updates to the site and labor exchange system to ensure user needs are met. The current contract for these survey services will expire September 20, 2016. WDA desires to continue utilizing a web-based survey to measure customer satisfaction and gather feedback from its users, as well as benchmark against other government and public sector organizations.

Users of Pure Michigan Talent Connect include, but are not limited to, State of Michigan staff, Michigan Works! staff, job seekers, employers, career explorers, veterans, students, parents and education providers.

The selected solution must be ADA compliant and accessible on mobile devices as well as desktop and laptop computers. Pure Michigan Talent Connect is fully compatible with multiple device types through responsive design.

REQUIREMENTS

1. General Requirements

1.1. Work and Deliverables

A. Business Requirements

The Contractor's proposal shall include a detailed narrative solution and work plan to address stated objectives. The narrative and work plan must address how, at a minimum, the following contract requirements will be met:

1. Overall plan. The Contractor shall:
 - a. Provide the tools and assistance needed to implement a software and survey ACSI-Based Model for the site being monitored
 - b. Design and build survey needed to gather customer intelligence. Advise WDA regarding the specific implementation of the code for the web-based survey components
 - c. Assist in the analysis of data
2. Identify the data, information and resources required from WDA and MDTMB.
3. Provide technical support to assist WDA and MDTMB with the following tasks:
 - a. Placement of the survey on the web, survey questions will be established by contractor and WDA, with WDA final approval.
 - b. Recommend in a report web enhancement suggestions in response to survey results
 - c. Provide recommendations on the frequency of end users selected for the survey
4. Testing
 - a. The Contractor is responsible for delivering a fully-tested system that is ready for user acceptance testing by designated agency personnel.
 - b. WDA and MDTMB shall perform joint user acceptance testing of the web-based survey process.
5. Provide online reporting immediately following the completion of a statistically significant number of survey responses to be agreed upon with WDA.
 - a. Thereafter, online reporting will be recompiled and made available online after an agreed upon additional number of responses.
6. Provide an Online Portal for WDA to view statistics, reports, comments and analytical results. The web site shall:
 - a. Be a specific, secure web site accessed via unique user id and password
 - b. Allow constant monitoring on WDA's part
7. Provide additional monthly and detail reporting in electronic report format for the site to analyze and make recommendations for improved customer satisfaction based on the data collected
8. Provide semi-annual summaries, delivered through Satisfaction Insight Reviews, beginning 6 months from the contract start date, for the site to include for each quarter:
 - a. Review survey history
 - i. Start date and survey period,
 - ii. Total times served,
 - iii. Total times completed,
 - iv. Response rate.
 - b. Average element satisfaction and future behavior results
 - c. Benchmarks for element scores
 - i. Satisfaction scores and future behavior results.
 - ii. Site vs. site comparison among multiple website properties,
 - iii. Composite scores for private sector and governmental entities
 - iv. List of published scores for individual entities.
 - d. Review history of results
 - i. Element scores over time,
 - ii. Customer satisfaction scores over time,
 - iii. Future behavior scores over time.
 - iv. Verbatim comments to open ended questions.
 - e. Prioritize areas of improvement
 - i. areas to focus resources,
 - ii. areas to "keep Status Quo",
 - iii. areas to monitor and
 - iv. Areas to limit additional resources.
 - f. Summarize custom question results.

- g. Discuss data segmentation opportunities that the client would like to explore; for example: first-time visitors vs. non-first-time visitors
- h. Provide recommendations on:
 - i. Customer experience
 - ii. Usability
- 9. Present results to WDA at WDA's work site or via web conference along with an electronic version of these results.
- 10. The solution must be accessible on mobile devices as well as desktop and laptop computers.

B. Implementation

- 1. Provide specific code to upload to the Pure Michigan Talent Connect web site
 - a. Javascript code is preferred
- 2. Provide testing
 - a. The Contractor shall provide a description of unit, systems and user acceptance testing.
 - b. The Contractor shall perform complete and comprehensive tests of its code prior to its delivery for placement on the web site.
 - c. The Contractor is responsible to establish a test environment.
 - d. The Contractor will test the code in the test environment and provide proof it is operations ready.
 - e. If errors are uncovered during testing, Contractor shall make corrections to the code at no additional cost to the State.
- 3. Provide new code if:
 - a. WDA changes/periodically enhances custom questions
 - b. WDA requests the loyalty factor be changed. Loyalty factor is defined as the number of screens the user views before the survey is presented.
 - c. Upgrades and new browser versions to the system that affect survey functionality

C. Maintenance and Support

- 1. The Contractor will provide on-going services for code changes that WDA might request.
 - a. The Contractor's response must include pricing for all proposed services.
- 2. The Contractor will provide 48 hour notice for scheduled maintenance and must quickly identify any problems. Changes are included in the on-going support and maintenance costs.
- 3. Contractor shall provide options for telephone, fax, e-mail and internet access for technical support of State-supported functions of the system and the resolution of system issues.
 - a. Such support shall be provided during normal business hours, 8am-5pm EST Monday through Friday), not including State holidays. Outside of Contractor's normal business hours (7am to 6pm ET) clients may call (877) 224-9282. (Local (734) 205-2608) (Available all times but to be used after normal business hours).
 - b. The Contractor shall maintain a log and track the resolution of all State-initiated support requests.
- 4. The Contractor is responsible for the maintenance and hosting of an Online Portal to house the survey data, statistics, reports, comments and analytical results. If using a sub-contractor, Contractor must identify such sub-contractor in its proposal. Contractor must provide a Service Level Agreement that addresses, at a minimum, all of the following:
 - a. Uptime
 - i. The Contractor's on-line system (to view statistics, reports, etc.) shall be accessible by users no less than 98% of the time between 7 am and 6 pm on Business Days. (See Schedule C)
 - b. Maintenance (should cover scheduled and emergency downtime policies)
 - c. Technical Support
 - d. Security
 - e. Backup / Restore
 - f. Disaster Recovery
- 5. Contractor's Support:
 - a. Support Services: All support requests should be submitted through phone or email contact with the appropriate parties. Most issues can be addressed by the State's assigned Customer Experience Analyst (CXA). Additionally, support will be available through email and phone directly into the Implementation Services Department. Business Hours Support:

Monday – Friday from 7:30 am to 6:30 pm U.S. Eastern Time. Outside of normal business hours (7am to 6pm ET) clients may call (877) 224-9282. (Local (734) 205-2608) (Available all times but to be used after normal business hours).

- b. How requests for code modification will be handled: No custom code configuration or modification is required for ongoing support post go-live. Custom code may be modified, however, if the State wishes to change any configuration decisions, such modifications would be supported by the ForeSee Implementation Services team.
 - c. How bug fixes and errors will be reported and resolved: The Contractor's SaaS platform is regularly upgraded for the benefit of all clients. For the hosted portal application, the Contractor typically has a small maintenance release every 2-4 weeks. This may include bug fixes, minor new features, or changes specific for certain customers. Contractor schedules these in the evenings for minimum downtime. Point releases (7.7 to 7.8, for instance) are 2-3 per year. Clients are given 48-hours notice to scheduled maintenance and releases. Notices are typically delivered via alert messages in the online portal upon login. Non-portal related maintenance/update communication is delivered through the assigned analyst or account manager via phone call or email. On occasion new offerings will be launched that may require a separate fee.
6. All problems shall be resolved, or a plan of action to resolve, within four hours from the time the problem was first reported to the Contractor. If statistics program is down, a 24 hour resolution is required.

1.2. Training

The Contractor must provide up to three one-hour trainings on usage of an Online Portal for WDA to view statistics, reports, comments and analytical results.

A ForeSee implementation packet will be provided to the client upon delivery of the trigger code. This implementation packet will have step-by-step instructions on how to implement the code into the sites. ForeSee's technical team will also be available to help with the implementation.

Contractor must provide user manuals and technical manuals upon request.

1.3. ADA Compliance

The State of Michigan is required to comply with the Americans with Disabilities Act of 1990 (ADA), and has adopted a formal policy regarding accessibility requirements for websites and software applications. The website (and any related applications) must conform to level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.0.

2. Acceptance

2.1. Acceptance, Inspection and Testing

The State will use the following criteria to determine acceptance of the Contract Activities:

- *WDA project manager approval of the quarterly summary reports (as identified in 1.1A8).*

3. Staffing

3.1. Contractor Representative

The Contractor appoints the following Contractor Representative, specifically assigned to State of Michigan accounts, that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. (the "Contractor Representative").

-Rick Jacobson, Enterprise Account Manager

The Contractor must notify the Contract Administrator at least 14 calendar days before removing or assigning a new Contractor Representative.

3.2. Customer Service Toll-Free Number

The Contractor's toll-free number for the State to make contact with the Contractor Representative is listed below.

(800) 627-2850

The Contractor Representative must be available for calls during the hours of 8 am to 5 pm EST.

3.3. Technical Support, Repairs and Maintenance

The Contractor must specify its toll-free number for the State to make contact with the Contractor for technical support, repairs and maintenance. The Contractor must be available for calls and service during the hours of 8 am to 5 pm EST.

3.4. Key Personnel

The Contractor must appoints the following Key Personnel who will be directly responsible for the day-to-day operations of the Contract ("Key Personnel"). Key Personnel must be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquires within 24 hours.

- Rick Jacobson – responsible for the overall relationship with WDA
- Katie Bennett – responsible for the Client Services aspect

3.5. Disclosure of Subcontractors

Secure-24 is the Contractor's Data center partner. Secure-24 manages production network and hardware for the Contractor's Primary and Backup data centers. They are located at 26955 Northwestern Hwy #200, Southfield, MI 48033. The Data Center is under contract to fully manage all of the Contractor's equipment 24X7, with significant financial penalties for any downtime resulting in less than 98% availability.

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

The legal business name; address; telephone number; a description of subcontractor's organization, the relationship of the subcontractor to the Contractor, a complete description of the Contract Activities that will be performed or provided by the subcontractor; and information concerning subcontractor's ability to provide the Contract Activities.

4. Project Management

4.1. Meetings

The Contractor must attend the following meetings:

- Kickoff meeting

The State may request other meetings, as it deems appropriate.

4.2. Reporting

Reporting formats must be submitted to the State's Project Manager for approval within (30) business days after the execution of the contract 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.

In addition to the reports identified in Section 1.1A8, the Contractor will provide the following:

- Issues*
- Change Control*
- Repair status*
- Maintenance Activity*

5. Ordering

5.1. Authorizing Document

The appropriate authorizing document for the Contract will be a Purchase Order.

6. Invoice and Payment

6.1. Invoice Requirements

All invoices submitted to the State must include: (a) date; (b) purchase order; (c) quantity; (d) description of the Contract Activities; (e) unit price; (f) shipping cost (if any); and (g) total price. Overtime, holiday pay, and travel expenses will not be paid.

6.2. Payment Methods

The State will make payment by EFT for Contract Activities by quarterly firm fixed payment upon acceptance in section 2.1.

6.3. Procedure

Contractor must submit invoice to Program Manager for appropriate approvals prior to payment by Accounts Payable.



STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Foresee Results, Inc. (“**Contractor**”), a Delaware corporation. This Contract is effective on October 1, 2016 (“**Effective Date**”), and unless terminated, expires on September 30, 2019.

This Contract may be renewed for up to two additional one year periods. Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.

The parties agree as follows:

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

“**Authorized Users**” means all Persons authorized by the State to access and use the Services under this Contract, subject to the maximum number of users specified in an applicable Purchaser Order or SOW.

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

“**Confidential Information**” has the meaning set forth in **Section 28.a**.

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

“**Contract Activities**” has the meaning set forth in **Section 2**.

“**Contract Administrator**” is the individual appointed by each party to (a) administer the terms of this Contract, and (b) approve any Change Notices under this Contract. Each party’s Contract Administrator will be identified in **Section 4**.

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

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

“**Dispute Resolution Procedure**” has the meaning set forth in **Section 39**.

“**Documentation**” means all user manuals, operating manuals, technical manuals and any other instructions, specifications, documents or materials, in any form or media, that describe the functionality, installation, testing, operation, use, maintenance, support, technical or other components, features or requirements of the Online Portal, Service Software, and other relevant Services.

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

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

“Experience Analytics Data” has the meaning set forth in Schedule C.

“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 Service Software, Online Portal, or other 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.

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

“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.

“Online Portal” means a website, some other hosted system, or any data access portal, including the tools and reporting provided therein, used to store survey data, statistics, reports, comments, analytical results, and such other data, work products or services for remote electronic access and use by the State and its Authorized Users.

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

“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.

“Reports” means any and all reports that Contractor is obligated to or otherwise does provide under the Statement of Work.

“**Services**” means any of the services Contractor, or any Subcontractor, is required to or otherwise does provide under this Contract, or in the Statement of Work, including but not limited to analysis, implementation, maintenance, support, testing, and incident response.

“**Service Software**” means any and all software applications, analytical and reporting tools, survey tools and triggers, and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Contractor provides as part of the Services. This includes any program routines or programming code that may be distributed as part of the Services, including but not limited to the Content Publisher Platform, MYO Platform, ResellerRatings.com Platform, graphic design, layout and user interfaces, survey trigger code, mobile software development kit and cxReplay code.

“**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**” means the State of Michigan.

“**State Data**” has the meaning set forth in **Section 27.a**.

“**Statement of Work**” or “**SOW**” means the statement of work entered into by the parties and attached as **Schedule A** to this Contract.

“**Stop Work Order**” has the meaning set forth in **Section 19**.

“**Subcontractor**” means any Person with whom Contractor contracts with to provide Services or Contract Activities under a SOW.

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

“**Transition Period**” has the meaning set forth in **Section 22**.

“**Transition Responsibilities**” has the meaning set forth in **Section 22**.

“**User Data**” means any and all information reflecting the access or use of the Online Portal 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. **Duties of Contractor.** Contractor must perform the Services and provide the deliverables described in **Schedule A – Statement of Work** and in Schedule B – Service Levels and Support (collectively the “**Contract Activities**”). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

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

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State’s operations; (e) obtain

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

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

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

If to State:	If to Contractor:
Amanda Bright McClanahan 300 N. Washington Square Lansing, MI 48913 Amanda@michigan.org 517-373-9190	General Counsel 2500 Green Road, Suite 400 Ann Arbor, MI 48105 legal@foresee.com 734-205-2617

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

State:	Contractor:
Amanda Bright McClanahan 300 N. Washington Square Lansing, MI 48913 Amanda@michigan.org 517-373-9190	Cara Edwards 2500 Green Road, Suite 400 Ann Arbor, MI 48105 legal@foresee.com 734-205-2617

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

State:	Contractor:
Amy Hiltunen 201 N. Washington Square Lansing, MI 48913 hiltunena@michigan.gov 517-373-9217	Rick Jacobson 2500 Green Road, Suite 400 Ann Arbor, MI 48105 legal@foresee.com 734-205-2635

6. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request.

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

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 insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.
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 or work is not performed on-site.
Employers Liability Insurance	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	
Privacy and Security Liability (Cyber Liability) Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.
Professional Liability (Errors and Omissions) Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate <u>Deductible Maximum:</u> \$50,000 Per Loss	

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

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.

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

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

employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.

9. **Intellectual Property Rights.** Ownership of services, software application licenses, data, and content provided by Contractor are set forth in Schedule C – Ownership and Licenses to this Contract.
10. **State License Grant.** The State hereby grants to Contractor a limited, non-exclusive, non-transferable license (i) to use the State's name, trademarks, service marks or logos, solely in accordance with this Contract or as otherwise specified in the State's written specifications, and (ii) to display, reproduce, distribute and transmit in digital form the State's name, trademarks, service marks or logos in connection with promotion of the Contract Activities as communicated to Contractor in writing by the State in accordance with this Contract.
11. **Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor.
12. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
13. **Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks at its own cost.
14. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.
15. **Change of Control.** Contractor will notify the State, promptly upon the effective date, of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

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

16. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in the SOW.
17. **Acceptance.** Contract Activities are subject to inspection and testing by the State in accordance with the SOW. Unless otherwise specified in the SOW, Contract Activities are subject to the following acceptance procedures:
Within 30 calendar days of the State's receipt of Contract Activities ("**State Review Period**") or such other period as may be agreed upon in writing, the Contract Activities must be accepted in writing by the State's Program Manager. If the Contract Activities are not fully accepted by the State, the State will notify Contractor in writing by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 20, Termination for Cause.

Within 15 Business Days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, or such other period as may be agreed upon in writing, Contractor must cure, at no additional cost, the noted deficiencies and deliver acceptable Contract Activities to the State.

If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part.

- 18. Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt of a valid invoice. Contractor may only charge for Contract Activities performed as specified in the SOW. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Contract are for the State's exclusive use. Notwithstanding the foregoing, all prices are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

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

- 19. Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written notice detailing the suspension (a "**Stop Work Order**"). Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.

- 20. Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in **Section 21**, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs.

21. Termination for Convenience. The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with **Section 22, Transition Responsibilities**. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.

22. 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 Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State;; (d) transferring and delivering to the State all Experience Analytics Data collected by Contractor in performance of the Contract Activities; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

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

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial 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 (at its own expense); and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

24. Infringement Remedies. If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

25. Limitation of Liability. The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.

26. Disclosure of Litigation, or Other Proceeding. Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

27. State Data

- a. Ownership. The State's data ("**State Data**"), which will be treated by Contractor as Confidential Information includes the State's data collected, used, processed, stored, or generated as the result of the Contract Activities, including User Data. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this Contract.
- b. Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this Contract.
- c. Extraction of State Data. Contractor must, within ten (10) Business Days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format specified by the State.
- d. Backup and Recovery of State Data. Unless otherwise specified in the SOW, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data..
- e. PII. Contractor's data collection software and services used in performance of the Contract Activities shall not collect or record any personal information or personal identifying information ("**PII**") as defined in the Michigan Identity Theft Protection Act, 2004 PA 452, MCL 445.61 *et seq.*. Contractor may collect zipcode, age range, gender or other data about characteristics of groups of individuals, however, this data shall not be collected in conjunction with any other data that could be used to distinguish or trace any individual's identity.

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

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

such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.

- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

29. Data Privacy and Information Security

- a. Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the Contractor to safeguard its own confidential information.
- b. Protection of State Data. Throughout the Term and at all times in connection with its actual or required performance of the Services hereunder, Contractor will ensure that the Service Software, Online Portal, and all State Data is securely hosted, supported, administered, and accessed in a data center that resides in the continental United States, and minimally meets Uptime Institute Tier 3 standards (www.uptimeinstitute.com).

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

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

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

31. Warranties and Representations. Contractor represents and warrants:

- a. Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use;
- b. all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect;
- c. the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary or intellectual property rights of any third party;
- d. the Contract Activities are merchantable and fit for the specific purposes identified in the Contract;
- e. the Contractor signatory has the authority to enter into this Contract;
- f. all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes;
- g. all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading;
- h. 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;
- i. the Contractor Online Portal and Service Software are and will remain free of Harmful Code;
- j. Contractor will not advertise through the Online Portal (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.
- k. 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
- l. Contractor acknowledges that the State cannot indemnify any third parties, including but not limited to any third-party software providers that provide software that will be incorporated in or otherwise used in conjunction with the Services, and that notwithstanding anything to the contrary contained in any third-party software license agreement or end user license agreement, the State will not indemnify any third party software provider for any reason whatsoever.

A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under **Section 20**, Termination for Cause.

32. Conflicts and Ethics. Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

33. Compliance with Laws. Contractor must comply with all federal, state and local laws, rules and regulations.

- 34. 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.
- 35. Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
- 36. Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
- 37. Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
- 38. Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
- 39. Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision (the “**Dispute Resolution Procedure**”). The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 Business Days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.
- Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 Business Days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.
- 40. Media Releases.** News releases (including public testimonials, promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
- 41. Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
- 42. Entire Agreement and Order of Precedence.** This Contract, which includes Schedule A – Statement of Work, and expressly incorporated schedules and exhibits, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Schedule A – Statement of Work; (b) second, Schedule A – Statement of Work as of the Effective Date; and (c) third, exhibits and schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

- 43. Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
- 44. Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 45. Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
- 46. Contract Modification.** This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

STATE OF MICHIGAN

Contract No. 186B7700001
 Pure Michigan Talent Connect (PMTTC) Web Survey

SCHEDULE B PRICING MATRIX

Pricing includes 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).

	Deliverable	ForeSee Results, Inc.
1	<i>Delivery of Code Schedule A, Section 1.1.A Business Requirements</i>	\$52,500 (2 measures, desktop and mobile phone/tablet at \$26,250 each)
2	<i>Semi-Annual Reports Schedule A, Section 1.1.A.8</i>	\$4,500 x 2 reports per year = \$9,000
3	<i>Implementation Schedule A, Section 1.1.B Implementation</i>	Included
4	<i>Maintenance and Support Schedule A, Section 1.1.C Maintenance and Support</i>	Included
5	<i>Addition of 1 Usability Audit Review as proposed by ForeSee Results, Inc., including:</i> <ul style="list-style-type: none"> • <i>Audit of a high-priority area for one measure that is conducted by a usability auditor</i> • <i>Report and web-based presentation of top 10 usability violations and recommendations based on best practice by the auditor to your team</i> 	\$9,000
Total Annual Price		\$70,500
Total Contract Price (3 Years)		\$211,500

Schedule C
Service Levels and Support

Section 1 SERVICE LEVELS AND SUPPORT

(a) Availability Service Level.

ForeSee Services: ForeSee will provide the Services on a 24 x 7 x 365 basis with an uptime guarantee of 98%.

Service Availability guarantees do not apply to the following:

- Any latency or downtime due to State's or State's users' acts or omissions,
- Acts of unauthorized third parties or third parties over which ForeSee has no control,
- Scheduled maintenance, not exceeding three (3) hours per month,
- Problems associated with State's or State's user's hardware or software used to access the Services, or
- Circumstances beyond ForeSee's reasonable control, including, without limitation, Force Majeure.

(b) General Support. ForeSee will provide support for the Services as set forth below:

- (i) ForeSee will provide all necessary resources to support acceptance testing, troubleshooting, and implementation of the Services;
- (ii) ForeSee will provide 24 x 7 x 365 telephone and e-mail support for assistance in identifying and resolving Errors (in accordance with the Severity Levels and Response Times set forth in Section 1(c) and 1(d) below), and will be available to answer questions related to the operational use of the Services;
- (iii) ForeSee will monitor the Services to ensure that they are being provided according to the standards of this Schedule and applicable SOWs;
- (iv) ForeSee will promptly report all outages, including performance degradation to the person identified on the first page of this Schedule unless otherwise identified by State.
- (v) ForeSee may schedule upgrades and maintenance for the Services without restriction, unless the applicable Statement of Work restricts upgrade and maintenance times (the "Maintenance Window");
- (vi) Any non-scheduled or emergency maintenance which impacts the Services must be communicated to State immediately. Failure to notify State of a Maintenance Window or unscheduled or emergency maintenance that results in one or more Severity 1 or Severity 2 incidents (as defined in Section 1(c) below) in a given year will constitute a violation of this Schedule.

(c) Severity Levels. When ForeSee initially detects a problem with the Services (an "Error"), and/or when State reports to ForeSee an Error with the Services, the Error will be promptly classified by the reporting party in accordance with the following severity incident guidelines.

Severity	Definition
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Incident Level	
Severity 1	A critical problem with the Services in which any of the following occur: the Services are down, inoperable, inaccessible or unavailable, the Services otherwise materially cease operation; the performance or nonperformance of the Services prevents useful work from being done.
Severity 2	A problem with the Services in which any of the following occur: the Services are severely limited or degraded, major functions are not performing properly, the situation is causing a significant impact to certain portions of State and/or Services users' operations or productivity; or the Services have been interrupted but recovered, and in State's opinion there is high risk of reoccurrence.
Severity 3	A minor or cosmetic problem with the Services in which any of the following occur: the problem is an irritant, affects non-essential functions, has minimal impact to business operations; the problem is localized or has isolated impact; the problem is an operational nuisance; the problem results in documentation errors; or the problem is any other problem that is not a Severity 1 or a Severity 2, but is otherwise a failure of the Services to conform to its Specifications.

- (d) **Incident Response Service Level.** ForeSee will respond to State and provide Initial Responses, Temporary Resolutions and Final Resolutions in accordance with the time requirements set forth in the table below.

Severity Level:	Initial Response will be provided within:	Temporary Resolution will be provided within:	Final Resolution will be provided within:
1	1 hour from receipt of initial notice from State, or other discovery, of an Error	4 hours from receipt of initial notice from State, or other discovery, of an Error	7 days from receipt of initial notice from State, or other discovery, of an Error

2	2 hours from receipt of initial notice from State, or other discovery, of an Error	48 hours from receipt of initial notice from State, or other discovery, of an Error	14 days from receipt of initial notice from State, or other discovery, of an Error
3	2 business days from receipt of initial notice from State, or other discovery, of an Error	7 days from receipt of initial notice from State, or other discovery, of an Error	30 days from receipt of initial notice from State, or other discovery, of an Error

(e) For purposes of this Section 1(d), the following definitions apply:

- (1) "Initial Response" means a verbal, written, or electronic response from ForeSee to State regarding a reported or discovered Error;
- (2) "Temporary Resolution" means a temporary fix or patch that has been implemented and incorporated into the Services by ForeSee to restore the Services functionality in accordance with its Specifications until the Final Resolution is available;
- (3) "Final Resolution" means a permanent fix that has been implemented and incorporated into Services by ForeSee to restore Services functionality in accordance with its Specifications.

Section 2 MEASUREMENT AND REPORTING.

- (a) **Monthly Reports.** ForeSee shall provide any measurement and reporting set forth in an applicable SOW.
- (b) **Regular Reviews.** ForeSee will engage in regular review sessions with State to analyze any on-going problems with the Services, analyze the root causes of both resolved and unresolved problems, and explore and employ methods of improving the Services generally.

Section 3 SERVICE CREDITS.

- (a) **Availability Service Level.** If ForeSee fails to meet its Availability Service Level identified in Section 1 (a) above, State shall be entitled to credits as follows:

Service Availability	ForeSee Credit*
99.9% or greater	n/a
99.5% - 99.8%	n/a
99% - 99.4%	n/a
98%-99%	n/a
95%-97.9%	5%
90.0-94.9%	10%
80.0% - 89.9%	15%
79.9% or below	100%

* against monthly fee for the affected Service

- (b) **Incident Response Service Level.** If ForeSee fails to meet an Incident Response Service Level identified in Section 1(d) above, State shall be entitled to a credit equal to 10% of the total ForeSee fees charged to State for the affected Service for the month in which ForeSee failed to meet the metric, with a maximum credit equal to 30% for any given month (e.g., three failures).
- (c) **Chronic Failure to Meet Service Levels.** If either the Availability Service Level or the Incident Response Service Level is missed (by any amount) for two consecutive months or for four months out of any twelve month period, it will be considered a material breach of this Addendum and State reserves the right, at its sole discretion and in addition to any and all other remedies available at law or at equity (and in addition to its service credits), to terminate the Addendum or applicable Exhibit or SOW immediately upon written notice.
- (d) **Set-off Rights.** Amounts due State by ForeSee as credits as set forth herein may be deducted or set-off by State from any money payable to ForeSee pursuant to the applicable SOW.

SCHEDULE D

OWNERSHIP AND LICENSES

- 1. Ownership of Services.** Except as expressly licensed below, all aspects of intellectual property rights of every sort in or in connection with the Services are owned solely by Contractor, including methods, trade dress, program code, including source code, Adobe Flash Animation (FLA) files, object code and microcode, formulae, techniques, processes, improvements, designs, software designs, computer programs, and strategies. Other than as expressly permitted under this Contract, the State may not copy, distribute, display or perform publicly, sublicense, decompile, disassemble, reduce to human readable form, execute publicly, make available to the public, adapt, make commercial use, process, compile, translate, sell, lend, rent, reverse engineer, combine with other software, modify or create derivative works of any material that is subject to Contractor's proprietary rights, including computer code, graphic design, layout, user interfaces, and reports, in any way or by any means, including, but not limited to by electronic, mechanical or optical means. The State shall not use any of the computer code, graphic design, layout and user interfaces (collectively, "**Features**") of the Service outside of the Services. Contractor retains all trademark or service mark rights in the Services, and all applicable marks and logos, whether registered or not. The State may not adapt or use otherwise any name, mark or logo that is identical, or confusingly similar to any of these marks and logos. The State may not dilute or tarnish the goodwill of Contractor or its marks and logos. Subject to any obligations regarding Confidential Information, each party will be free to use the concepts, techniques and know-how retained in the performance or receipt of the Services.
- 2. Software Application Licenses.** To enable the State to receive the Service(s) described in any authorized Statement(s) of Work, Contractor grants the State, and the State accepts, a non-exclusive, non-transferable, license to install, store, operate and/or use the client-side portion of the Service(s) described in an applicable Statement of Work, including: (a) any program routines or programming code that may be distributed as part of the Service, including but not limited to the Content Publisher Platform, MYO Platform, ResellerRatings.com Platform, graphic design, layout and user interfaces, survey trigger code, mobile software development kit and cxReplay code, and any other Service Software; (b) any URL that may be distributed or otherwise hosted as part of the Service (the "**Service URL**"); and (c) any Online Portal, including the tools and reporting provided therein. The State agrees to use the Service Software, Service URL, and/or the Online Portal, as applicable, for no purpose other than as part of the Service(s), as described in the applicable Statement(s) of Work. Service Software may be installed, stored, and operated only as provided in the applicable Statement of Work. The State shall not challenge the validity of, or attempt to create any derivative works from any Services. The State acknowledges that it has no proprietary rights in any Contractor brand names, trade names, trade dress or any trademarks, or any copyrighted content, or any other intellectual property belonging to or licensed by Contractor in the course of providing the Services (collectively, "**Contractor IP**"), and the State shall not challenge Contractor's proprietary rights in or to any of the Contractor IP. The State acknowledges that except as expressly provided in this Contract, all uses of Services, and all goodwill associated therewith, shall inure solely to the benefit of Contractor. The license granted herein shall be revoked upon termination of this Contract.
- 3. Data and Content Ownership and Licenses.**

- a. **Data and Content Provided by Contractor.** Except for the customer experience and employee satisfaction data (collectively the “**Experience Analytics Data**”) expressly provided for below, and State data contained within reports and scorecards provided to the State by Contractor, all data and content provided by Contractor, including without limitation the proprietary service components described in Section 2, shall remain Contractor’s exclusive property; provided that such data and content are licensed to the State for the purposes of receiving the Services. Such license is non-exclusive, royalty free, fully paid-up, worldwide, and sub-licensable. The license granted herein shall be revoked upon termination of this Contract.
- b. **Client Customer Experience and/or Employee Experience Data.** Experience Analytics Data collected by Contractor belongs to the State. The State grants Contractor a license to use all numerical data for the purposes of performing the Contract Activities so long as its use of such information is in an aggregated, anonymized and de-identified manner and to compile proprietary aggregate data points (“**Aggregated Indices**”). The Aggregated Indices are compiled from customer and employee experience data belonging to all Contractor clients, and used in benchmark reports delivered to Contractor clients on a monthly basis. The Aggregated Indices and benchmark reports will contain the State’s data along with data from a minimum of four other clients. The Aggregated Indices and benchmark reports will not contain individually identifiable data regarding the State, its employees, or its customers and will not allow a user thereof to ascertain or otherwise isolate data regarding the State, its employees or its customers. Contractor may identify the State by name to describe the Aggregated Indices participants in the benchmark reports that are delivered to Contractor’s clients, but shall not use the State’s data in publicly syndicated reports. The Aggregated Indices are Contractor Confidential Information subject to the provisions of Section 28 of the Contract Terms.