



**STATE OF MICHIGAN PROCUREMENT**  
Department of Technology, Management, and Budget  
525 W. Allegan St., Lansing, MI 48913  
PO Box 30026, Lansing, MI 48909

**CONTRACT CHANGE NOTICE**

Change Notice Number **2**  
to  
Contract Number **210000001616**

<b>CONTRACTOR</b>	Kunz Leigh & Associates Inc	<b>STATE</b>	Program Manager	Soopriya Razdan	DTMB
	28081 Southfield Road			517-219-2766	
	Lathrup Village, MI 48076-2816			razdans@michigan.gov	
	Justin Shaulis		Contract Administrator	Todd Huhn	DTMB
	517-803-3217			517-335-0954	
	j.shaulis@kunzleigh.com			huhnt@michigan.gov	
	CV0036059				

CONTRACT SUMMARY				
DESCRIPTION: Maintenance and Operations of the MiTracking.				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
10/01/2021	09/30/2024	7 – 1 Year	09/30/2024	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1 Year	<input type="checkbox"/>		09/30/2025
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$240,000.00		\$25,000.00	\$265,000.00	
DESCRIPTION: Effective at execution, this Contract is exercising the first option year and is increased by \$25,000. The revised contract expiration date is 09/30/2025. All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement, DTMB Central Procurement Services approval, and State Administrative Board approval on 04/23/2024.				

**FOR THE CONTRACTOR:**

Kunz Leigh & Associates

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**Company Name**

E-SIGNED by Justin Shaulis  
on 2024-04-19 09:25:41 EDT

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**Authorized Agent Signature**

Justin Shaulis

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**Authorized Agent** (Print or Type)

2024-04-19 09:25:41 UTC

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**Date**

**FOR THE STATE:**

E-SIGNED by Jordan Sherlock  
on 2024-04-23 11:51:58 EDT

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**Signature**

Jordan Sherlock

Procurement Manager,  
Office of Financial Services

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**Name & Title**

State of Michigan, DTMB

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**Agency**

2024-04-23 11:51:58 UTC

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**Date**





**STATE OF MICHIGAN PROCUREMENT**  
 Department of Technology, Management, and Budget  
 525 W. Allegan St., Lansing, MI 48913  
 PO Box 30026, Lansing, MI 48909

**CONTRACT CHANGE NOTICE**

Change Notice Number **1**  
 to  
 Contract Number **210000001616**

<b>CONTRACTOR</b>	Kunz Leigh & Associates Inc	<b>STATE</b>	Program Manager	Soopriya Razdan	DTMB
	28081 Southfield Road			517-219-2766	
	Lathrup Village, MI 48076-2816		Contract Administrator	razdans@michigan.gov	
	Justin Shaulis			Todd Huhn	DTMB
	517-803-3217			517-335-0954	
	j.shaulis@kunzleigh.com			huhnt@michigan.gov	
	CV0036059				

CONTRACT SUMMARY				
DESCRIPTION: Maintenance and Operations of the MiTracking.				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
10/01/2021	09/30/2024	7 – 1 Year	09/30/2024	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$240,000.00		\$00.00	\$240,000.00	
DESCRIPTION: Please note the Program Manager for this Master Agreement has been changed to Soopriya Razdan. The DHHS Program Manager has been changed to Libby Trubac, 517-335-4664, TrubacL@michigan.gov. All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement Services approval.				

**FOR THE CONTRACTOR:**

Kunz Leigh & Associates

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**Company Name**

E-SIGNED by Justin Shaulis  
on 2024-02-23 09:50:56 EST

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**Authorized Agent Signature**

Justin Shaulis

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**Authorized Agent** (Print or Type)

2024-02-23 09:50:56 UTC

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**Date**

**FOR THE STATE:**

E-SIGNED by Jordan Sherlock  
on 2024-02-23 11:32:26 EST

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**Signature**

Jordan Sherlock

Procurement Manager, Office of Financial Services

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**Name & Title**

State of Michigan, DTMB

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**Agency**

2024-02-23 11:32:26 UTC

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**Date**





**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

**NOTICE OF CONTRACT**

NOTICE OF CONTRACT NO. **210000001616**

between

THE STATE OF MICHIGAN

and

<b>CONTRACTOR</b>	Kunz Leigh & Associates Inc
	28081 Southfield Road
	Lathrup Village, MI 48076-2816
	Justin Shaulis
	517-803-3217
	j.shaulis@kunzleigh.com
	CV0036059

<b>STATE</b>	Program Manager	Jillian Maras	DHHS
		517-284-4813	
		marasj@michigan.gov	
	Contract Administrator	Todd Huhn	DTMB
		517-335-0954	
		huhnt@michigan.gov	

CONTRACT SUMMARY			
<b>DESCRIPTION: MDHHS Maintenance and Operations of the MiTracking</b>			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
10/01/2021	9/30/2024	7 – 1 year	9/30/2024
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
MISCELLANEOUS INFORMATION			
Effective Date 10/01/2021, this Contract originally issued by MDHHS contract E20212741-00, has been transferred to DTMB, per legislation 2020 PA 179, or MCL 18.1385. Per Contractor, Agency, DTMB Central Procurement on 10/01/2021.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$240,000.00

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**FOR THE CONTRACTOR:**

Kunz Leigh & Associates

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**Company Name**

E-SIGNED by Justin Shaulis  
on 2021-09-30 08:47:20 EDT

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**Authorized Agent Signature**

Justin Shaulis

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**Authorized Agent** (Print or Type)

2021-09-30 08:47:20 UTC

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Date

**FOR THE STATE:**

E-SIGNED by Lacey Wilke  
on 2021-10-01 10:31:42 EDT

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Signature

Lacey Wilke

Procurement Manager - Financial Services

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Name & Title

DTMB - State of Michigan

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Agency

2021-10-01 10:31:42 UTC

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Date



# STATE OF MICHIGAN

## IT PROFESSIONAL SERVICES CONTRACT TERMS

This IT Professional Services Contract (the “**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Kunz Leigh & Associates (“**Contractor**”), a corporation. This Contract is effective on October 1, 2021, and unless terminated, expires on September 30, 2024.

This Contract may be renewed for up to seven (7) additional one (1) year periods. Renewal must be by written notice from the State and will automatically extend the Term of this Contract.

The parties agree as follows:

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

“**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 21**.

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

“**Contract Administrator**” is the individual appointed by each party to (a) administer the terms of this Contract, and (b) approve any Change Notices under this Contract. Each party’s Contract Administrator will be identified in **Section 5**.

“**Contract Change Notice**” has the meaning set forth in **Section 37**

“**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 and creation of Work Product under this Contract.

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

“**Financial Audit Period**” has the meaning set forth in **Section 24**.

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

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

“**Services**” means any of the services Contractor, or any Subcontractor, is required to or otherwise does provide under this Contract, the Statement of Work or the Service Level Agreement.

**“Service Level Agreement”** means the service level agreement setting forth Contractor’s support obligations for the Software, attached as **Schedule C** to this Contract.

**“Software”** means, collectively, the State’s software applications and systems set forth in an appendix to the Statement of Work.

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

**“State Data”** has the meaning set forth in **Section 10.a.**

**“State Review Period”** has the meaning set forth in **Section 11.**

**“Statement of Work”** has the meaning set forth in **Section 2.**

**“Stop Work Order”** has the meaning set forth in **Section 13.**

**“Subcontractor”** has the meaning set forth in **Section 3.f.**

**“Transition Responsibilities”** has the meaning set forth in **Section 16.**

**“Unauthorized Removal”** has the meaning set forth in **Section 3.e.ii.**

**“Unauthorized Removal Credit”** has the meaning set forth in **Section 3.e.iii.**

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

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

2. **Statement of Work.** Contractor shall provide the Services and Work Product pursuant to the Statement of Work, attached as **Schedule A** to this Contract (the **“Statement of Work”**). The terms and conditions of this Contract will apply at all times to the Statement of Work. The State shall have the right to terminate the Statement of Work, in whole or in part, as set forth in **Sections 14 and 15** of this Contract.

3. **Performance of Services.**

- a. **Performance Warranty.** Contractor represents and warrants that its Services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of this Contract and the specifications set forth in the Statement of Work and the Service Level Agreement. For any breach of this warranty, the State may, at its option, either terminate the Statement of Work immediately pursuant to the termination provision herein, or require Contractor to provide replacement personnel satisfactory to the State within thirty (30) calendar days of Contractor’s receipt of notification from the State. Whether or not the departing Contractor Personnel are to continue working while Contractor attempts to find replacement personnel is at the sole discretion of the State. If Contractor is notified within the first eight (8) hours of assignment that the person is unsatisfactory, Contractor will not charge the State for those hours; otherwise, the State shall pay for all actual hours worked prior to the State’s notification of a replacement request to Contractor.

- b. **Software Support.** Contractor shall provide support Services for the Software pursuant to the Service Level Agreement attached as **Schedule C** to this Contract.

- c. **State Standards**

- i. The Contractor and its Subcontractor(s) must adhere to all existing standards as described within the comprehensive listing of the State’s existing technology standards of which the publicly

available ones are at [https://www.michigan.gov/dtmb/0,5552,7-358-82547\\_56579\\_56755---.00.html](https://www.michigan.gov/dtmb/0,5552,7-358-82547_56579_56755---.00.html)

- ii. To the extent that Contractor has access to the State's computer system, Contractor must comply with the State's Acceptable Use Policy, see [https://www.michigan.gov/documents/dtmb/1340.00.01\\_Acceptable\\_Use\\_of\\_Information\\_Technology\\_Standard\\_458958\\_7.pdf](https://www.michigan.gov/documents/dtmb/1340.00.01_Acceptable_Use_of_Information_Technology_Standard_458958_7.pdf). All Contractor Personnel will be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State's system. The State reserves the right to terminate Contractor's access or specific Contractor Personnel's access to the State's system if the State, in its sole discretion, determines that a violation has occurred.

iii. **Accessibility Requirements.**

- 1. All Software and Work Product created or provided by Contractor under this Contract, including associated content and documentation, must conform to WCAG 2.0 Level AA. Contractor must provide a completed PAT for each such deliverable provided under the Contract. All "Not Applicable" or "N/A" responses to the specifications, if any, must be fully explained. A description of the evaluation methods used to support WCAG 2.0 Level AA conformance claims, including, if applicable, any third-party testing, must be provided.. Throughout the Term of the Contract, at no additional costs to the State, Contractor must:
  - a. promptly respond to and resolve, in a manner acceptable to the State, any complaint the State receives regarding the accessibility of any Software or Work Product;
  - b. upon the State's written request, provide Software or Work Products in one or more alternative formats and within timeframes specified by the State; and
  - c. participate in the State of Michigan Digital Standards Review described below.
- 2. State of Michigan Digital Standards Review. Prior to Software or Work Products being accepted, put into production, or as otherwise required by the State, the State may conduct a Digital Standards Review to assess their accessibility and compliance with WCAG 2.0 Level AA. Contractor must assist the State with each such review, including submitting documentation or other information regarding accessibility and compliance with WCAG 2.0 Level AA. Contractor must, at its sole cost and expense, remediate all issues resulting from such review in a manner and timeframe accepted in writing by the State, which may include providing a remediation status report and updated PAT to the State and a re-assessment of accessibility. .
- 3. Failure to comply with the requirements in this **Section 3** shall constitute a material breach of this Contract.

**d. Contractor Personnel**

- i. Contractor is solely responsible for all Contractor Personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits.
- ii. Prior to any Contractor Personnel performing any Services, Contractor will:
  - 1. ensure that such Contractor Personnel have the legal right to work in the United States;
  - 2. upon request, require such Contractor Personnel to execute written agreements, in form and substance acceptable to the State, that bind such Contractor Personnel to confidentiality provisions that are at least as protective of the State's information (including all Confidential Information) as those contained in this Contract; and
- iii. upon request, or as otherwise specified in a Statement of Work, perform background checks on all Contractor Personnel prior to their assignment. The scope is at the discretion of the State and

documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks on Contractor Personnel. Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and subcontractor employees, who may have access to any database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018.

- iv. Contractor and all Contractor Personnel will comply with all rules, regulations, and policies of the State that are communicated to Contractor in writing, including security procedures concerning systems and data and remote access, building security procedures, including the restriction of access by the State to certain areas of its premises or systems, and general health and safety practices and procedures.
- v. The State reserves the right to require the removal of any Contractor Personnel found, in the judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Replacement personnel for the removed person must be fully qualified for the position. If the State exercises this right, and Contractor cannot immediately replace the removed personnel, the State agrees to negotiate an equitable adjustment in schedule or other terms that may be affected by the State's required removal.

e. **Contractor's Key Personnel**

- i. The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State's Project Manager, and provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection.
- ii. Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("**Unauthorized Removal**"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under **Section 14**.
- iii. It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 14**, Contractor will issue to the State the corresponding credits set forth below (each, an "**Unauthorized Removal Credit**"):
  - 1. For the Unauthorized Removal of any Key Personnel designated in the Statement of Work, the credit amount will be \$25,000.00 per individual if Contractor identifies a replacement approved by the State and assigns the replacement to shadow the Key Personnel who is leaving for a period of at least 30 calendar days before the Key Personnel's removal.

2. If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 calendar days, in addition to the \$25,000.00 credit specified above, Contractor will credit the State \$833.33 per calendar day for each day of the 30 calendar-day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000 maximum per individual. The total Unauthorized Removal Credits that may be assessed per Unauthorized Removal and failure to provide 30 calendar days of shadowing will not exceed \$50,000.00 per individual.

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

- f. **Subcontractors.** Contractor will not, without the prior written approval of the State, which consent may be given or withheld in the State's sole discretion, engage any third party to perform Services (including to create any Work Product). The State's approval of any such third party (each approved third party, a "**Subcontractor**") does not relieve Contractor of its representations, warranties or obligations under this Contract. Without limiting the foregoing, Contractor will:

- i. be responsible and liable for the acts and omissions of each such Subcontractor (including such Subcontractor's employees who, to the extent providing Services or creating Work Product, shall be deemed Contractor Personnel) to the same extent as if such acts or omissions were by Contractor or its employees;
- ii. name the State a third party beneficiary under Contractor's contract with each Subcontractor with respect to the Services and Work Product;
- iii. be responsible for all fees and expenses payable to, by or on behalf of each Subcontractor in connection with this Contract, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits; and
- iv. prior to the provision of Services or creation of Work Product by any Subcontractor, if requested by the State:
  1. obtain from such Subcontractor confidentiality, work-for-hire and intellectual property rights assignment agreements, in form and substance acceptable by the State, giving the State rights consistent with those set forth in **Section 8** and, upon request, provide the State with a fully-executed copy of each such contract; and
  2. with respect to all Subcontractor employees providing Services or Work Product, comply with its obligations under **subsection d** above.

4. **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:
Todd Huhn State of Michigan DTMB 320 S. Walnut St. Lansing, MI 48933 huhnt@michigan.gov 517-335-0954	Justin Shaulis Kunz Leigh & Associates 28081 Southfield Road Lathrup Village, MI 48076 j.shaulis@kunzleigh.com (517) 803-3217

5. **Contract Administrators.** The Contract Administrator for each party is the only person authorized to modify any terms and conditions of this Contract and are identified below:

State:	Contractor:
Todd Huhn State of Michigan DTMB 320 S. Walnut St. Lansing, MI 48933 huhnt@michigan.gov 517-335-0954	Justin Shaulis Kunz Leigh & Associates 28081 Southfield Road Lathrup Village, MI 48076 j.shaulis@kunzleigh.com (517) 803-3217

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

Insurance Type	Additional Requirements
<b>Commercial General Liability Insurance</b>	
<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.
<b>Umbrella or Excess Liability Insurance</b>	
<u>Minimal Limits:</u> \$5,000,000 General Aggregate	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds.
<b>Automobile Liability Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	
<b>Workers' Compensation Insurance</b>	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
<b>Employers Liability Insurance</b>	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	
<b>Privacy and Security Liability (Cyber Liability) Insurance</b>	



<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.
<b>Professional Liability (Errors and Omissions) Insurance</b>	
<u>Minimal Limits:</u> \$3,000,000 Each Occurrence \$3,000,000 Annual Aggregate  <u>Deductible Maximum:</u> \$50,000 Per Loss	

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 Services; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Services; 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).

- 7. 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.

**8. Intellectual Property Rights.**

- a. The State is and will be the sole and exclusive owner of all right, title, and interest in and to all Work Product developed exclusively for the State under this Contract, including all Intellectual Property Rights. In furtherance of the foregoing:
  - i. Contractor will create all Work Product as work made for hire as defined in Section 101 of the Copyright Act of 1976; and
  - ii. to the extent any Work Product, or Intellectual Property Rights do not qualify as, or otherwise fails to be, work made for hire, Contractor hereby:
    1. assigns, transfers, and otherwise conveys to the State, irrevocably and in perpetuity, throughout the universe, all right, title, and interest in and to such Work Product, including all Intellectual Property Rights; and

2. irrevocably waives any and all claims Contractor may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of droit moral with respect to the Work Product.

b. Each party retains the right to retain and use its skill, knowledge, experience, and know-how, including ideas, concepts, processes, methods and techniques, whether developed prior to, independently of, or in the course of performing the services under this Contract.

9. **Assignment.** Contractor may not assign this Contract to any other party without the prior written 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.

10. **Change of Control.** Contractor will notify the State, within 30 days of any public announcement or otherwise once legally permitted to do so. 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.

11. **Acceptance.** Unless otherwise provided in the Statement of Work, this Section shall control acceptance of all Services and Work Product, including deliverables. Services and Work Product, including deliverables are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"). If the Services and Work Product, including deliverables are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Services or Work Product, including deliverables are accepted, but noted deficiencies must be corrected; or (b) the Services or Work Product are rejected. If the State finds material deficiencies, it may: (i) reject the Services or Work Product, including deliverables without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate a Statement of Work in accordance with **Section 14**, Termination for Cause.

Within 10 Business Days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Services or Work Product, Contractor must cure, at no additional cost, the deficiency and deliver acceptable Services or Work Product to the State. If acceptance with deficiencies or rejection of the Services or Work Product impacts the content or delivery of other non-completed Services or Work Product, the parties 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 Statement of Work in whole or in part. The State, or a third party identified by the State, may perform the Services and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

12. **Terms of Payment.** Invoices must conform to the requirements set forth in a Statement of Work. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Services and Work Product performed as specified in the Statement of Work. 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 and Work Product purchased under this Contract are for the State's exclusive use. Notwithstanding the foregoing, all prices are exclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

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 Services or Work Product. 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/SIGMAVSS> 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.

13. **Stop Work Order.** The State may suspend any or all activities under at a Statement of Work at any time. The State will provide Contractor a written stop work order 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 Statement of Work. The State will not pay for Services or Work Product, Contractor's lost profits, or any additional compensation during a stop work period.
14. **Termination for Cause.** The State may terminate this Contract, in whole or in part (including individuals Statements of Work), if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any State 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 under this Contract or the Statement of Work; 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 15**, Termination for Convenience.

The State will only pay for amounts due to Contractor for Services and Work Product 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, transition costs, and any costs the State incurs to procure the Services and Work Product from other sources.

15. **Termination for Convenience.** The State may immediately terminate this Contract, in whole or in part (including the Statement of Work), 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 Services immediately, or (b) continue to perform the Services in accordance with **Section 16**, 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.
16. **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), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Services at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Services, training, reports and other documentation, 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 title in and delivering to the State, at the State's discretion, all completed or partially completed Work Product prepared under this Contract as of the Contract termination date; 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.
17. **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; and (iii) employ its own counsel. 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.

- 18. Infringement Remedies.** If, in either party's opinion, any of the Services or Work Product 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 Services or Work Product, 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.

**19. Disclaimer of Damages and Limitation of Liability.**

- a. The State's Disclaimer of Damages. THE STATE WILL NOT BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES.
- b. The State's Limitation of Liability. IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT

**20. 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 Services. 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 Services, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Services. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Contract, the 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. Compromise of State Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) perform or take any other actions required to comply with applicable law as a result of the occurrence; (d) pay for any costs associated with the occurrence, including but not limited to any costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution; (e) pay for any costs associated with required notification and credit monitoring to affected individuals; and (f) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence. The parties agree that any damages relating to a breach of this **Section 20** are to be considered direct damages and not consequential damages. This Section survives termination or expiration of this Contract.

**21. 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 or is: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA) by the receiving party; (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 the Statement of Work corresponding to the breach or threatened breach.
  - e. Surrender of Confidential Information upon Termination. Upon termination or expiration of this Contract or a Statement of Work, in whole or in part, 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. Upon confirmation from the State, of receipt of all data, Contractor must permanently sanitize or destroy the State's Confidential Information, including State Data, from all media including backups using National Security Agency ("NSA") and/or National Institute of Standards and Technology ("NIST") (NIST Guide for Media Sanitization 800-88) data sanitation methods or as otherwise instructed by the State. If the State determines that the return of any Confidential Information is not feasible or necessary, Contractor must destroy the Confidential Information as specified above. The Contractor must certify the destruction of Confidential Information (including State Data) in writing within five (5) Business Days from the date of confirmation from the State.
22. **HIPAA Compliance.** Contractor agrees to comply, and ensure its Personnel comply, with the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder ("HIPAA") and Subtitle D of the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) and any regulations promulgated thereunder with respect to the privacy and security of "protected health information" (as defined by HIPAA) accessed, created, transmitted, maintained or received by Contractor or its Personnel pursuant to, or in connection with, the performance of Contractor's or its Personnel's obligations under this Contract, including but not limited to entering into a Business Associate Agreement if required by law.
23. **Data Privacy and Information Security.** Throughout the Term and at all times in connection with its actual or required performance of the Services, Contractor will maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State's Confidential Information that comply with the requirements of the State's data security policies as set forth in **Schedule D** to this Contract.
24. **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 ("**Financial Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Financial Audit Period, Contractor must retain the records until all issues are resolved.

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 Services 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 Services in connection with this Contract.

25. **Warranties and Representations.** Contractor represents and warrants to the State that: (a) It will perform all Services in a professional and workmanlike manner in accordance with best industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications, and will devote adequate resources to meet its obligations under the Statement of Work; (b) the Services and Work Product provided by Contractor will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (c) it has the full right, power, and authority to enter into this Contract, to grant the rights granted under this Contract, and to perform its contractual obligations; (d) 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; and (e) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business



with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under **Section 14**, Termination for Cause.

26. **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 Services in connection with this Contract.
27. **Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
28. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and Executive Directive [2019-09](#), Vendor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex (as defined in Executive Directive [2019-09](#)), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of the Contract.
29. **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.
30. **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.
31. **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 Services from other sources.
32. **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.
33. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Project 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.
34. **Media Releases.** News releases (including 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.

35. **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.
36. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
37. **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.
38. **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.
39. **Schedules.** All Schedules that are referenced herein and attached hereto are hereby incorporated by reference. The following Schedules are attached hereto and incorporated herein:

<b>Schedule A</b>	Statement of Work
<b>Schedule B</b>	Pricing
<b>Schedule C</b>	Service Level Agreement
<b>Schedule D</b>	Data Security Requirements
<b>Schedule E</b>	Federal Provisions Addendum

40. **Entire Agreement.** This Contract, including the Schedules, 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 Schedules, the following order of precedence governs: (a) first, this Contract; and (b) second, the Schedules. NO TERMS ON CONTRACTOR’S INVOICES, 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 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 SUCH SERVICE OR DOCUMENTATION REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.



## SCHEDULE A

### Statement of Work

#### 1. DEFINITIONS

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

Term	Definition
MDHHS	Michigan Department of Health and Human Services
MiTracking	Michigan Tracking Network
DTMB	Michigan Department of Technology, Management, and Budget
EFT	Electronic Funds Transfer is a system of transferring money from one bank directly to another.

#### 2. BACKGROUND

For many years, public health systems across the U.S. faced a knowledge gap about environmental hazards and public health. The Michigan Environmental Health Tracking Program, MiTracking, can help bridge this gap. The MiTracking Program gathers existing Michigan-specific environmental and health data and provides them in one online location.

These data can be easily queried on in the MiTracking data portal. Results are provided in tables, charts, and maps that can be downloaded, saved, and printed. The data provided by the MiTracking program can create greater awareness of environmental health concerns and inform public health actions and programs.

The MiTracking Program is part of the Centers for Disease Control and Prevention's National Tracking Network.

#### 3. PURPOSE

The purpose of this project is to maintain and enhance MiTracking Operations in support of the MDHHS's Michigan Tracking Network.

The MiTracking system in the production environment is fully compliant with current DTMB standards, including those related to ADA, end user operating environment, data security requirements, and system documentation.

#### 4. CONTRACT TERM

The contract overall term will be 3 years with 7, 1-year options.

#### 5. SPECIFIC STANDARDS

##### IT Policies, Standards and Procedures (PSP)

Contractors are advised that the State has methods, policies, standards and procedures that have been developed over the years. All services and products provided must comply with all applicable State IT policies and standards.

Public IT Policies, Standards and Procedures (PSP):

[https://www.michigan.gov/dtmb/0,5552,7-358-82547\\_56579\\_56755---,00.html](https://www.michigan.gov/dtmb/0,5552,7-358-82547_56579_56755---,00.html)

### **Acceptable Use Policy**

To the extent that Contractor has access to the State's computer system, Contractor must comply with the State's Acceptable Use Policy, see [https://www.michigan.gov/documents/dtmb/1340.00.01\\_Acceptable\\_Use\\_of\\_Information\\_Technology\\_Standard\\_458958\\_7.pdf](https://www.michigan.gov/documents/dtmb/1340.00.01_Acceptable_Use_of_Information_Technology_Standard_458958_7.pdf). All Contractor Personnel will be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State's system. The State reserves the right to terminate Contractor's access to the State's system if a violation occurs.

### **Look and Feel Standard**

All software items provided by the Contractor must adhere to the State of Michigan Application/Site Standards which can be found at [www.michigan.gov/standards](http://www.michigan.gov/standards).

### **Mobile Responsiveness**

The Contractor's Solution must utilize responsive design practices to ensure the application is accessible via a mobile device. Contractor must provide a list of all mobile devices that are compatible with the Solution. Additionally, Contractor must provide list of features that can be performed via a mobile device.

### **ADA Compliance**

The State is required to comply with the Americans with Disabilities Act of 1990 (ADA), and has adopted a formal policy regarding accessibility requirements for websites and software applications. The State is requiring that Contractor's Solution, where relevant, to level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.0. Contractor may consider, where relevant, the W3C's Guidance on Applying WCAG 2.0 to Non-Web Information and Communications Technologies (WCAG2ICT) for non-web software and content. The State may require that Contractor complete a Voluntary Product Accessibility Template for WCAG 2.0 (WCAG 2.0 VPAT) or other comparable document for the proposed Solution. [http://www.michigan.gov/documents/dmb/1650.00\\_209567\\_7.pdf?20151026134621](http://www.michigan.gov/documents/dmb/1650.00_209567_7.pdf?20151026134621)

## **6. USER TYPE AND CAPACITY**

Type of User	Access Type	Number of Users	Number of Concurrent Users
State Employees	Admin Access	5	5
SOM Contractors	Admin Access	2	2
Public	Admin Access	0	0

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

## **7. ACCESS CONTROL AND AUDIT**

The Contractor's solution must have the ability to integrate with the State's IT Identity and Access Management (IAM) environment as described in the State of Michigan Digital Strategy ([http://www.michigan.gov/dtmb/0,5552,7-150-56345\\_56351\\_69611-336646--,00.html](http://www.michigan.gov/dtmb/0,5552,7-150-56345_56351_69611-336646--,00.html)), which consist of:

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

- a. Allows federated single sign-on (SSO) for business partners, as well as citizen-based applications.
3. MILogin Multi Factor Authentication (MFA, based on system data classification requirements)
  - a. Required for those applications where data classification is Confidential and Restricted as defined by the 1340.00 Michigan Information Technology Information Security standard (i.e. the proposed solution must comply with PHI, PCI, CJIS, IRS, and other standards).
4. MILogin Identity Proofing Services (based on system data classification requirements)
  - a. A system that verifies individual's identities before the State allows access to its IT system. This service is based on "life history" or transaction information aggregated from public and proprietary data sources. A leading credit bureau provides this service.

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

## **8. DATA RETENTION**

Data will be hosted by the State.

## **9. SECURITY**

Contractor must review the Data Security requirements set forth in Schedule D – Data Security Requirements. Contractor must note any exceptions to the security requirements by redlining Schedule D – Data Security Requirements.

## **10. END-USER OPERATING ENVIRONMENT**

The SOM IT environment includes X86 VMware, IBM Power VM, MS Azure/Hyper-V and Oracle VM, with supporting platforms, enterprise storage, monitoring, and management.

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

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

This information can be found at <https://www.michigan.gov/browserstats>. Please use the most recent calendar quarter to determine browser statistics. For those browsers with over 2% of site traffic, except Internet Explorer which requires support for at minimum version 11, the current browser version as well as the previous two major versions must be supported.

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

## **11. INTEGRATION**

There are no data integration services needed at this time, however the State may need migration services in the future. If needed, additional contractor staff required for migration services must be agreed to by the State at the rates set forth in Schedule B – Pricing Rate Card.

## **12. MIGRATION**

There are no data migration services needed at this time, however the State may need migration services in the future. If needed, additional contractor staff required for migration services must be agreed to by the State at the rates set forth in Schedule B – Pricing Rate Card.

### **13. TESTING SERVICES AND ACCEPTANCE**

Contractor will undertake and coordinate testing activities described herein, prior to placing any system changes (i.e., enhancements and modifications) into production. The Contractor will provide confirmation that all hardware and software delivered in support of the MiTracking App is working in accordance with the manufacturer's specifications. The Contractor will also confirm that all functional objectives specified for these changes have been achieved. The Contractor will develop a test plan for any system change that details the activities; dependency risks, contingencies, assumptions, and resources required to fully test the change. The test plan will include creation of a Project Plan with test schedule, approach, and a statement of required and assigned resources with associated roles and responsibilities. The test plan will also include a go-no/go date for implementation that will be agreed upon with the State.

### **14. TRAINING SERVICES**

If needed, Contractor will provide administration and end-user training for implementation, go-live support, and transition to customer self-sufficiency. Contractor's team will include a business analyst lead who will produce the necessary training materials and/or users' guides and who will conduct administrator and user training just before each major release.

### **15. SUPPORT AND OPERATIONS**

Contractor must review the State's standard Service Level Agreement (SLA) attached as Schedule B. Contractor must note any exceptions to the SLA by redlining Schedule B – Service Level Agreement.

### **16. DOCUMENTATION**

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

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

### **17. TRANSITION SERVICES**

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

### **18. PRODUCTS AND SERVICES**

The project team will continue to utilize Scrum (Agile) development methodology of iterative Releases. Each Release will consist of production bug (defect) fixes and the development, testing and implementation of approved and planned functional enhancements into the

production system for further enhancing business functionality and further advancing customer service.

The project team will work with and report to MDHHS DEH and DTMB Agency Services management and will continue to follow the SUITE PMM and SEM Express methodologies during the duration of the Master Agreement.

<b>Maintenance and Support:</b> Bug (defect) corrections and internal quality assurance testing Approved functional enhancements to support Federal or State mandates or enterprise wide business processes User acceptance testing Production implementation activities
<b>Quick Help Video:</b> Add Video to public site to help users understand data query
<b>Zip code/City data/Minor Civil Division:</b> Adding the ability to upload and view data based on Zip code, City data and Minor Civil Division
<b>Google Analytics Integration:</b> Allow for MiTracking application to pull in information needed via administrative module for all google analytics data
<b>Enhanced Reporting:</b> Provide new functionality to produce data metrics and new ways to visualize data
<b>National Tracking API:</b> Allow the MiTracking application to pull in information directly from the CDC

## 19. CONTRACTOR KEY PERSONNEL

**Contractor Contract Administrator.** Contractor must identify the individual appointed by it to (a) administer the terms of this Contract, and (b) approve and execute any Change Notices under this Contract.

<b>Contractor</b>
Justin Shaulis Kunz Leigh & Associates 28081 Southfield Road Lathrup Village, MI 48076 j.shaulis@kunzleigh.com (517) 803-3217

**Contractor Project Manager.** Contractor must identify the Contractor Project Manager who will serve as the primary contact with regard to services who will have the authority to act on behalf of the Contractor in matters pertaining to the implementation services.

<b>Contractor</b>
<b>Travis Tompkins</b> Kunz Leigh & Associates

28081 Southfield Road Lathrup Village, MI 48076 tompkinst@michigan.com (517) 672-0527
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## **20. CONTRACTOR PERSONNEL REQUIREMENTS**

The Contractor must present certifications evidencing satisfactory Michigan State Police Background checks ICHAT and drug tests for all staff identified for assignment to this project.

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

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

Contractor must describe how they will meet the requirements set forth in this section.

## **21. STATE RESOURCES/RESPONSIBILITIES**

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

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

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

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

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

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

## **22. MEETINGS**

Contractor must attend the following meetings, at a location identified by the State and at no additional cost to the State. The State may request additional meetings, as necessary. The meetings shall not be considered begun or complete until initiated by the State. A meeting may be moved or cancelled by mutual consent in writing.:

### **PERFORMANCE REVIEW MEETINGS:**

The Contractor must attend monthly meetings, at a minimum, to review the Contractor's performance under the contract.

### **ACTIVE PROJECT MEETINGS:**

When there is an active project, the Contractor must attend project status meetings, cadence to be determined by the project team, occurring no less than weekly.

#### MAINTENANCE AND OPERATIONS MEETINGS:

When there are maintenance and operations (M&O) activities, the Contractor must attend M&O meetings occurring no less than monthly to cover topics such as issues, risks, budget, and schedule.

### **23. PROJECT CONTROL & REPORTS**

The Contractor Program Manager will monitor project implementation progress and report no less than on a quarterly basis to the State's Program Manager the following:

- 1) Error Reports with description of error and time for resolution from Schedule D - Service Level Agreement.
- 2) Performance to response and time reports from Schedule D – Service Level Agreement
- 3) Progress report which must contain:
  - i) Accomplishments: Indicate what was worked on and what was completed during the current reporting period.
  - ii) Upcoming Tasks: Indicate tasks due within the next reporting period.
  - iii) Risks: Indicate any risks, problems, or issues, which could delay the project or endanger its success.
  - iv) Updates: New releases or bug fixes to be delivered by Contractor in the next reporting period.
  - v) Summary of end user training provided and most common support issues

#### ANNUAL SECURITY REPORT

Contractor will provide security and control information for the State's annual security review with remediation of any issues reported in the monthly status reports.

All Contractors must submit and enter weekly timesheets into the State of Michigan's Project Portfolio Management tool, Clarity PPM, for approval and reporting. The weekly Clarity PPM timesheet will contain hours worked for assigned project tasks.

On a weekly basis throughout the lifecycle of the project, Contractor must provide data to the State's Project Manager to feed the weekly status report. The approved project plan, with the identified metrics, will serve as the baseline for tracking the project status. Contractor's Project Manager will monitor for change in resource productivity and availability, expected activity durations, and unanticipated risks. Contractor must notify the State's Project Manager if there is a potential adjustment needed in the project schedule and project budget. Contractor's Project Manager must provide the status of the following:

- Change in forecasted key milestone completion dates
- The current activity and accomplishments
- The number of hours expended during the past week
- Identify if the estimated hours are enough to complete the project
- Tasked planned for the next reporting period
- Issues and risks with proposed mitigation strategies

Contractor must enter weekly timesheets into the Project Portfolio Management tool, Clarity PPM, to ensure the State's Project Manager has the amount of funds expended during the current reporting period.

#### **24. PROJECT MANAGER**

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

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

#### **SUITE Documentation**

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

#### **25. PRICING**

Please see **Schedule B - Pricing** for a detailed description of all costs associated with maintaining and supporting the Solution, including all requested services set forth in the Contract..

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

#### **Travel and Expenses**

The State does not pay for overtime or travel expenses.

#### **26. ADDITIONAL INFORMATION**

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

### **SCHEDULE A – Business Specification Worksheet**

In the spring of 2016 Michigan Department of Health and Human Services (MDHHS) Division of Environmental Health (DEH) contracted with Kunz, Leigh & Associates (KL&A) to implement the Michigan Tracking Network (MiTracking) public portal. The MiTracking project is a Centers for Disease Control and Prevention (CDC) grant funded initiative. It currently consists of 26 states (Michigan being one of the latest states to join). This network provides access to Nationally Consistent Data and Measures (NCDMs). These NCDMs consist of standardized environmental and public health



measures. These data can be used by researchers or the general public. They can filter the data by measure and other key factors of the measure and display the information in tabular form, in graphical form, or on an interactive map.

For Fiscal Year 2022 (October 1<sup>st</sup> 2021 – September 30<sup>th</sup> 2022), Kunz, Leigh & Associates will continue to resolve production issues, implement functional enhancements and new functionality required to support evolving regulatory processes and improved business processes for the MiTracking Operations business domain.

## SCHEDULE B

### Pricing

Maintenance & Support Services	Year
\$25,000.00	Year 1
\$25,000.00	Year 2
\$25,000.00	Year 3

### Option Year Pricing

Maintenance & Support Services	Year
\$25,000.00	Year 4
\$25,000.00	Year 5
\$25,000.00	Year 6
\$25,000.00	Year 7
\$25,000.00	Year 8
\$25,000.00	Year 9
\$25,000.00	Year 10

**Contractor may invoice monthly.** Maintenance and support as stated will be invoiced in the beginning of the fiscal year.

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

#### Future Enhancements, Contractor Hourly Rates

The Contractor must utilize the following rates when providing the State with a fixed price proposal for all future enhancements. The fixed price proposal must include a breakdown by resource and rate per hour.

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Contractor Response:

All classifications below may at some point this year perform services under the contract.

The enhancements bucket will be set with an initial amount of \$125,000.00.

Rate Card:

Staffing Category	Year 1-10 Hourly Rate (\$)
Business Analyst	\$130.00
Business Analyst Lead	\$150.00
Consultant	\$200.00
Contract Administrator	\$150.00
Data Architect	\$150.00
Database Administrator/Developer	\$130.00
Developer/Programmer	\$130.00
Geographic Information System (GIS) Specialist	\$150.00
Lead Developer	\$150.00
Network Engineer	\$150.00
Program Manager	\$200.00
Project Manager	\$175.00
Quality Analyst	\$130.00
Quality Analyst Test Lead	\$150.00
Scrum Master	\$150.00
Security Officer	\$150.00
Senior Consultant	\$250.00
Service Manager	\$150.00
Team Manager	\$175.00
Technical Lead/Solution Architect	\$150.00
Technical Writer	\$120.00
Trainer	\$130.00
Training Lead	\$150.00

\*

## SCHEDULE C

### Service Level Agreement

The parties agree as follows:

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

**"Contact List"** means a current list of Contractor contacts and telephone numbers set forth in the attached **Schedule D – Attachment 1** to this Schedule to enable the State to escalate its Support Requests, including: (a) the first person to contact; and (b) the persons in successively more qualified or experienced positions to provide the support sought.

**"Critical Service Error"** has the meaning set forth in the Service Level Table.

**"Error"** means, generally, any failure or error referred to in the Service Level Table.

**"First Line Support"** means the identification, diagnosis and correction of Errors by the State.

**"High Service Error"** has the meaning set forth in the Service Level Table.

**"Low Service Error"** has the meaning set forth in the Service Level Table.

**"Medium Service Error"** has the meaning set forth in the Service Level Table.

**"Resolve"** and the correlative terms, **"Resolved"**, **"Resolving"** and **"Resolution"** each have the meaning set forth in **Section 2.4**.

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

**"Second Line Support"** means the identification, diagnosis and correction of Errors by the provision of (a) telephone and email assistance by a qualified individual on the Contact List and remote application support, or (b) on-site technical support at the State's premises by a qualified individual on the Contact List.

**"Service Levels"** means the defined Error and corresponding required service level responses, response times, Resolutions and Resolution times referred to in the Service Level Table.

**"Service Level Table"** means the table set out in **Section 2.4**.

**"State Cause"** means any of the following causes of an Error: (a) a State server hardware problem; (b) a desktop/laptop hardware problem; or (c) a State network communication problem.

**"State Systems"** means the State's information technology infrastructure, including the State's computers, software, databases, electronic systems (including database management systems) and networks.

**"Support Hours"** means Monday-Friday 8am-5pm Eastern Time excluding State of Michigan holidays.

**"Support Period"** means the period of time beginning 90 days after the date the Software has entered full production mode and ending on the date the Contract expires or is terminated.

**"Support Request"** has the meaning set forth in **Section 2.2**.

**2. Support Services.** The State will provide First Line Support prior to making a Service Request for Second Line Support. Contractor shall perform all Second Line Support and other Support Services during

the Support Hours throughout the Support Period in accordance with the terms and conditions of this Schedule and the Contract, including the Service Levels and other Contractor obligations set forth in this **Section 3E**.

2.1 Support Service Responsibilities. Contractor shall:

- (a) provide unlimited telephone support during all Support Hours;
- (b) respond to and Resolve all Support Requests in accordance with the Service Levels;
- (c) provide unlimited remote Second Line Support to the State during all Support Hours;
- (d) provide on-premise Second Line Support to the State if remote Second Line Support will not Resolve the Error; and
- (e) provide to the State all such other services as may be necessary or useful to correct an Error or otherwise fulfill the Service Level requirements, including defect repair, programming corrections and remedial programming.

2.2 Support Requests. Once the State has determined that an Error is not the result of a **State Cause**, the State may request Support Services by way of a Support Request. The State shall classify its requests for Error corrections in accordance with the support request classification and definitions of the Service Level Table set forth in **Section 3.4**. (each a "**Support Request**"). The State shall notify Contractor of each Support Request by e-mail or telephone. The State shall include in each Support Request a description of the reported Error and the time the State first observed the Error.

2.3 State Obligations. The State shall provide the Contractor with each of the following to the extent reasonably necessary to assist Contractor to reproduce operating conditions similar to those present when the State detected the relevant Error and to respond to and Resolve the relevant Support Request:

- (i) if not prohibited by the State's security policies, remote access to the State Systems, and if prohibited, direct access at the State's premises;
- (ii) output and other data, documents and information, each of which is deemed the State's Confidential Information as defined in the Contract; and
- (iii) such other reasonable cooperation and assistance as Contractor may request.

2.4 Service Level Table. Response and Resolution times will be measured from the time Contractor receives a Support Request until the respective times Contractor has (a) responded to that Support Request, in the case of response time and (b) Resolved that Support Request, in the case of Resolution time. "**Resolve**", "**Resolved**", "**Resolution**" and correlative capitalized terms mean, with respect to any particular Support Request, that Contractor has corrected the Error that prompted that Support Request and that the State has confirmed such correction and its acceptance of it in writing. Contractor shall respond to and Resolve all Support Requests within the following times based on the State's designation of the severity of the associated Error, subject to the parties' written agreement to revise such designation after Contractor's investigation of the reported Error and consultation with the State:

Support Request Classification	Definition	Service Level Metric (Required Response Time)	Service Level Metric (Required Resolution Time)

<b>Critical Service Error</b>	<p>(a) Issue affecting entire Software system or single critical production function;</p> <p>(b) Software down or operating in materially degraded state;</p> <p>(c) Data integrity at risk;</p> <p>(d) Material financial impact;</p> <p>(e) Widespread access interruptions: or</p> <p>(f) Classified by the state as a Critical Service Error</p>	<p>Contractor shall acknowledge receipt of a Support Request within thirty (30) minutes.</p>	<p>Contractor shall Resolve the Support Request as soon as practicable and no later than four (4) hours after Contractor's receipt of the Support Request.</p> <p>If the Contractor Resolves the Support Request by way of a work-around accepted in writing by the State, the support classification assessment will be reduced to a High Service Error.</p>
<b>High Service Error</b>	<p>(a) A Critical Service Error for which the State has received, within the Resolution time for Critical Service Errors, a work-around that the State has accepted in writing; or</p> <p>(b) Primary component failure that materially impairs Software's performance;</p> <p>(c) Data entry or access is materially impaired on a limited basis; or</p> <p>(d) performance issues of severe nature impacting critical processes</p>	<p>Contractor shall acknowledge receipt of a Support Request or, where applicable, the State's written acceptance of a Critical Service Error work-around, within twenty-four (24) hours.</p>	<p>Contractor shall Resolve the Support Request as soon as practicable and no later than two (2) Business Days after Contractor's receipt of the Support Request or, where applicable, the State's written acceptance of a Critical Service Error work-around.</p>

<b>Medium Service Error</b>	An isolated or minor Error in the Software that meets any of the following requirements:  (a) does not significantly affect Software functionality;  (b) can or does impair or disable only certain non-essential Software functions; or  (c) does not materially affect the State's use of the Software	Contractor shall acknowledge receipt of the Support Request within two (2) Business Days.	Contractor shall Resolve the Support Request as soon as practicable and no later than ten (10) Business Days after Contractor's receipt of the Support Request.
<b>Low Service Error</b>	Request for assistance, information, or services that are routine in nature.	Contractor shall acknowledge receipt of the Support Request within five (5) Business Days.	N/A

2.5 Escalation. If Contractor does not respond to a Support Request within the relevant Service Level response time, the State may escalate the Support Request to the Contractor Project Manager and State Program Managers, or their designees, and then to the parties' respective Contract Administrators.

2.6 Time Extensions. The State may, on a case-by-case basis, agree in writing to a reasonable extension of the Service Level response or Resolution times.

2.7 Contractor Updates. Contractor shall give the State monthly electronic or other written reports and updates of:

- (a) the nature and status of its efforts to correct any Error, including a description of the Error and the time of Contractor's response and Resolution;
- (b) its Service Level performance, including Service Level response and Resolution times; and
- (c) the Service Credits to which the State has become entitled.

### 3. Service Credits.

3.1 Service Credit Amounts. If the Contractor fails to respond to a Support Request within the applicable Service Level response time or to Resolve a Support Request within the applicable Service Level Resolution time, the State will be entitled to the corresponding service credits specified in the table below ("**Service Credits**"), provided that the relevant Error did not result from a State Cause.

Support Request Classification	Service Level Credits	Service Level Credits
--------------------------------	-----------------------	-----------------------

	(For Failure to Respond to any Support Request Within the Corresponding Response Time)	(For Failure to Resolve any Support Request Within the Corresponding Required Resolution Time)
<b>Critical Service Error</b>	An amount equal to 5% of the then current monthly Support Fee for each hour by which Contractor's response exceeds the required Response time.	An amount equal to 5% of the then current monthly Support Fee for each hour by which Contractor's Resolution of the Support Request exceeds the required Resolution time.
<b>High Service Error</b>	An amount equal to 3% of the then current monthly Support Fee for each Business Day, and a pro-rated share of such percentage for each part of a Business Day, by which Contractor's response exceeds the required Response time.	An amount equal to 3% of the then current monthly Support Fee for each Business Day, and a pro-rated share of such percentage for each part of a Business Day, by which Contractor's Resolution of the Support Request exceeds the required Resolution time.

3.2 Compensatory Purpose. The parties intend that the Service Credits constitute compensation to the State, and not a penalty. The parties acknowledge and agree that the State's harm caused by Contractor's delayed delivery of the Support Services would be impossible or very difficult to accurately estimate as of the Effective Date, and that the Service Credits are a reasonable estimate of the anticipated or actual harm that might arise from Contractor's breach of its Service Level obligations.

3.3 Issuance of Service Credits. Contractor shall, for each monthly invoice period, issue to the State, together with Contractor's invoice for such period, a written acknowledgment setting forth all Service Credits to which the State has become entitled during that invoice period. Contractor shall pay the amount of the Service Credit as a debt to the State within fifteen (15) Business Days of issue of the Service Credit acknowledgment, provided that, at the State's option, the State may, at any time prior to Contractor's payment of such debt, deduct the Service Credit from the amount payable by the State to Contractor pursuant to such invoice.

3.4 Additional Remedies for Service Level Failures. Contractor's repeated failure to meet the Service Levels for Resolution of any Critical Service Errors or High Service Errors, or any combination of such Errors, within the applicable Resolution time set out in the Service Level Table will constitute a material breach under the Contract. Without limiting the State's right to receive Service Credits under this **Section 4**, the State may terminate this Schedule for cause in accordance with terms of the Contract.

**4. Communications.** In addition to the mechanisms for giving notice specified in the Contract, unless expressly specified otherwise in this Schedule or the Contract, the parties may use e-mail for communications on any matter referred to herein.



## SCHEDULE D – DATA SECURITY REQUIREMENTS

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

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

“**FedRAMP**” means the Federal Risk and Authorization Management Program, which is a federally approved risk management program that provides a standardized approach for assessing and monitoring the security of cloud products and services.

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

“**Hosting Provider**” means any Permitted Subcontractor that is providing any or all of the Hosted Services under this Contract.

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

“**PCI**” means the Payment Card Industry.

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

“**SSAE**” means Statement on Standards for Attestation Engagements.

“**Security Accreditation Process**” has the meaning set forth in **Section 6** of this Schedule

**2. Security Officer.** Contractor will appoint a Contractor employee to respond to the State’s inquiries regarding the security of the Hosted Services who has sufficient knowledge of the security of the Hosted Services and the authority to act on behalf of Contractor in matters pertaining thereto (“**Contractor Security Officer**”).

**3. Contractor Responsibilities.** 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 any State Data in Contractor’s or its subcontractor’s possession; and
- (e) ensure that all Contractor Representatives comply with the foregoing.

The State has established Information Technology (IT) PSPs to protect IT resources under the authority outlined in the overarching State 1305.00 Enterprise IT Policy. In no case will the safeguards of Contractor’s data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable public and non-public State IT policies and standards, of which the publicly available ones are at [https://www.michigan.gov/dtmb/0,5552,7-358-82547\\_56579\\_56755---,00.html](https://www.michigan.gov/dtmb/0,5552,7-358-82547_56579_56755---,00.html).

This responsibility also extends to all service providers and subcontractors with access to State Data or an ability to impact the contracted solution. Contractor responsibilities are determined from the PSPs based on the services being provided to the State, the type of IT solution, and the applicable laws and regulations.

**4. Acceptable Use Policy.** To the extent that Contractor has access to the State's IT environment, Contractor must comply with the State's Acceptable Use Policy, see [https://www.michigan.gov/documents/dtmb/1340.00.01\\_Acceptable\\_Use\\_of\\_Information\\_Technology\\_Standard\\_458958\\_7.pdf](https://www.michigan.gov/documents/dtmb/1340.00.01_Acceptable_Use_of_Information_Technology_Standard_458958_7.pdf). All Contractor Personnel will be required, in writing, to agree to the State's Acceptable Use Policy before accessing State systems. The State reserves the right to terminate Contractor's and/or subcontractor(s) or any Contractor Personnel's access to State systems if the State determines a violation has occurred.

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

5.1 If Hosted Services are provided by a Hosting Provider, ensure each Hosting Provider maintains FedRAMP authorization for all Hosted Services environments throughout the Term, and in the event a Hosting Provider is unable to maintain FedRAMP authorization, the State, at its sole discretion, may either a) require the Contractor to move the Software and State Data to an alternative Hosting Provider selected and approved by the State at Contractor's sole cost and expense without any increase in Fees, or b) immediately terminate this Contract for cause pursuant to **Section 15.1** of the Contract;

5.2 for Hosted Services provided by the Contractor, maintain either a FedRAMP authorization or an annual SSAE 18 SOC 2 Type II audit based on State required NIST Special Publication 800-53 MOD Controls using identified controls and minimum values as established in applicable State PSPs.

5.3 ensure that the Software and State Data is securely hosted, supported, administered, accessed, and backed up in a data center(s) that resides in the continental United States, and minimally meets Uptime Institute Tier 3 standards ([www.uptimeinstitute.com](http://www.uptimeinstitute.com)), or its equivalent;

5.4 maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State Data that complies with the requirements of the State's data security policies as set forth in this Contract, and must, at a minimum, remain compliant with FISMA and NIST Special Publication 800-53 MOD Controls using identified controls and minimum values as established in applicable State PSPs;

5.5 provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, encryption, transfer, commingling or processing of such information that ensure a level of security appropriate to the risks presented by the processing of State Data and the nature of such State Data, consistent with best industry practice and applicable standards (including, but not limited to, compliance with FISMA, NIST, CMS, IRS, FBI, SSA, HIPAA, FERPA and PCI requirements as applicable);

5.6 take all reasonable measures to:

(a) secure and defend all locations, equipment, systems and other materials and facilities employed in connection with the Services against "malicious actors" and others who may seek, without authorization, to destroy, disrupt, damage, encrypt, modify, copy, access or otherwise use Hosted Services or the information found therein; and

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

5.7 ensure that State Data is encrypted in transit and at rest using FIPS validated AES encryption modules and a key size of 128 bits or higher;

5.8 ensure the Hosted Services support Identity Federation/Single Sign-on (SSO) capabilities using Security Assertion Markup Language (SAML), Open Authentication (OAuth) or comparable State approved mechanisms;

5.9 ensure the Hosted Services implements NIST compliant multi-factor authentication for privileged/administrative and other identified access.

**6. Security Accreditation Process.** Throughout the Term, Contractor will assist the State, at no additional cost, with its **Security Accreditation Process**, which includes the development, completion and on-going maintenance of a system security plan (SSP) using the State's automated governance, risk and compliance (GRC) platform, which requires Contractor to submit evidence, upon request from the State, in order to validate Contractor's security controls within two weeks of the State's request. On an annual basis, or as otherwise required by the State such as for significant changes, re-assessment of the system's controls will be required to receive and maintain authority to operate (ATO). All identified risks from the SSP will be remediated through a Plan of Action and Milestones (POAM) process with remediation time frames based on the risk level of the identified risk. For all findings associated with the Contractor's solution, at no additional cost, Contractor will be required to create or assist with the creation of State approved POAMs and perform related remediation activities. The State will make any decisions on acceptable risk, Contractor may request risk acceptance, supported by compensating controls, however only the State may formally accept risk. Failure to comply with this section will be deemed a material breach of the Contract.

**7. Unauthorized Access.** Contractor may not access, and shall not permit any access to, State systems, in whole or in part, whether through the Hosted Services or otherwise, without the State's express prior written authorization. Such authorization may be revoked by the State in writing at any time in its sole discretion. Any access to State systems must be solely in accordance with the Contract and this Schedule, and in no case exceed the scope of the State's authorization pursuant to this Section. All State-authorized connectivity or attempted connectivity to State systems shall be only through the State's security gateways and firewalls and in compliance with the State's security policies set forth in the Contract as the same may be supplemented or amended by the State and provided to Contractor from time to time.

## **8. Security Audits.**

8.1 During the Term, Contractor will maintain complete and accurate records of its data protection practices, IT security controls, and the security logs relating to State Data, including but not limited to any backup, disaster recovery or other policies, practices or procedures relating to the State Data and any other information relevant to its compliance with this Contract.

8.2 Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Services and from time to time during the term of this Contract. The State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. If the State chooses to perform an on-site audit, Contractor will, make all such records, appropriate personnel and relevant materials available during normal business hours for inspection and audit by the State or an independent data security expert that is reasonably acceptable to Contractor, provided that the State: (i) gives Contractor at least five (5) Business Days prior notice of any such audit; (ii) undertakes such audit no more than once per calendar year, except for good cause shown; and (iii) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Contractor's normal business operations and that complies with the terms and conditions of all data confidentiality, ownership, privacy, security and restricted use provisions of the Contract. The State may, but is not obligated to, perform such security audits, which shall, at the State's option and request, include penetration and security tests, of any and all Hosted Services and their housing facilities and operating environments.

8.3 During the Term, Contractor will, when requested by the State, provide a copy of Contractor's or Hosting Provider's FedRAMP System Security Plan(s) or SOC 2 Type 2 report(s) to the State within two weeks of the State's request. The System Security Plan and SSAE audit reports will be recognized as Contractor's Confidential Information.

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

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

**9. Application Scanning.** During the Term, Contractor must, at its sole cost and expense, scan all Contractor provided applications, and must analyze, remediate and validate all vulnerabilities identified by the scans as required by the State Secure Web Application and other applicable PSPs.

Contractor's application scanning and remediation must include each of the following types of scans and activities:

9.1 Dynamic Application Security Testing (DAST) – Scanning interactive application for vulnerabilities, analysis, remediation, and validation (may include Interactive Application Security Testing (IAST)).

(a) Contractor must either a) grant the State the right to dynamically scan a deployed version of the Software; or b) in lieu of the State performing the scan, Contractor must dynamically scan a deployed version of the Software using a State approved application scanning tool, and provide the State a vulnerabilities assessment after Contractor has completed such scan. These scans and assessments i) must be completed and provided to the State quarterly (dates to be provided by the State) and for each major release; and ii) scans must be completed in a non-production environment with verifiable matching source code and supporting infrastructure configurations or the actual production environment.

9.2 Static Application Security Testing (SAST) - Scanning Source Code for vulnerabilities, analysis, remediation, and validation.

(a) For Contractor provided applications, Contractor, at its sole expense, must provide resources to complete static application source code scanning, including the analysis, remediation and validation of vulnerabilities identified by application Source Code scans. These scans must be completed for all Source Code initially, for all updated Source Code, and for all Source Code for each major release and Contractor must provide the State a vulnerability assessment after Contractor has completed the required scans.

9.3 Software Composition Analysis (SCA) – Third Party and/or Open Source Scanning for vulnerabilities, analysis, remediation, and validation.

(a) For Software that includes third party and open source software, all included third party and open source software must be documented and the source supplier must be monitored by the Contractor for notification of identified vulnerabilities and remediation. SCA scans may be included as part of SAST and DAST scanning or employ the use of an SCA tool to meet the scanning requirements. These scans must be completed for all third party and open source software initially, for all updated third party and open source software, and for all third party and open source software in each major release and Contractor must provide the State a vulnerability assessment after Contractor has completed the required scans if not provided as part of SAST and/or DAST reporting.

9.4 In addition, application scanning and remediation may include the following types of scans and activities if required by regulatory or industry requirements, data classification or otherwise identified by the State.

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

(b) Penetration Testing – Simulated attack on the application and infrastructure to identify security weaknesses.

#### **10. Infrastructure Scanning.**

10.1 For Hosted Services, Contractor must ensure the infrastructure and applications are scanned using an approved scanning tool (Qualys, Tenable, or other PCI Approved Vulnerability Scanning Tool) at least monthly and provide the scan's assessments to the State in a format that is specified by the State and used to track the remediation. Contractor will ensure the remediation of issues identified in the scan according to the remediation time requirements documented in the State's PSPs.

#### **11. Nonexclusive Remedy for Security Breach.**

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

Schedule D  
Attachment 1

Vendor Contact List

Role	Designee
KL&A Contract Administrator	Justin Shaulis j.shaulis@kunzleigh.com 517-803-3217
KL&A Project Manager	Travis Tompkins tompkinst@michigan.gov 517-672-0527

## Schedule E - Federal Provisions Addendum

This addendum applies to purchases that will be paid for in whole or in part with funds obtained from the federal government. The provisions below are required and the language is not negotiable. If any provision below conflicts with the State's terms and conditions, including any attachments, schedules, or exhibits to the State's Contract, the provisions below take priority to the extent a provision is required by federal law; otherwise, the order of precedence set forth in the Contract applies. Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

### 1. Equal Employment Opportunity

If this Contract is a “**federally assisted construction contract**” as defined in [41 CFR Part 60-1.3](#), and except as otherwise may be provided under [41 CFR Part 60](#), then during performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of [Executive Order 11246](#) of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by [Executive Order 11246](#) of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in [Executive Order 11246](#) of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in [Executive Order 11246](#) of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules,

regulations, or orders of the Secretary of Labor issued pursuant to section 204 of [Executive Order 11246](#) of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

## **2. Davis-Bacon Act (Prevailing Wage)**

If this Contract is a **prime construction contracts** in excess of \$2,000, the Contractor (and its Subcontractors) must comply with the Davis-Bacon Act ([40 USC 3141-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"), and during performance of this Contract the Contractor agrees as follows:

- (1) All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- (2) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- (3) Additionally, contractors are required to pay wages not less than once a week.

## **3. Copeland "Anti-Kickback" Act**

If this Contract is a contract for construction or repair work in excess of \$2,000 where the Davis-Bacon Act applies, the Contractor must comply with the Copeland "Anti-Kickback" Act ([40 USC 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"), which prohibits the Contractor and subrecipients from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled, and during performance of this Contract the Contractor agrees as follows:



- (1) Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (2) Subcontracts. The Contractor or Subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA or the applicable federal awarding agency may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and Subcontractor as provided in 29 C.F.R. § 5.12.

#### **4. Contract Work Hours and Safety Standards Act**

If the Contract is **in excess of \$100,000** and **involves the employment of mechanics or laborers**, the Contractor must comply with [40 USC 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)), as applicable, and during performance of this Contract the Contractor agrees as follows:

- (1) Overtime requirements. No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The State shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

#### **5. Rights to Inventions Made Under a Contract or Agreement**

If the Contract is funded by a federal "funding agreement" as defined under [37 CFR §401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that

“funding agreement,” the recipient or subrecipient must comply with [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

## **6. Clean Air Act and the Federal Water Pollution Control Act**

If this Contract is in excess of \$150,000, the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act ([42 USC 7401-7671g](#)) and the Federal Water Pollution Control Act ([33 USC 1251-1387](#)), and during performance of this Contract the Contractor agrees as follows:

### Clean Air Act

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

### Federal Water Pollution Control Act

- (1) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

## **7. Debarment and Suspension**

A “contract award” (see [2 CFR 180.220](#)) must not be made to parties listed on the government-wide exclusions in the [System for Award Management](#) (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement [Executive Orders 12549](#) ([51 FR 6370; February 21, 1986](#)) and [12689](#) ([54 FR 34131; August 18, 1989](#)), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than [Executive Order 12549](#).

- (1) This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the State. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **8. Byrd Anti-Lobbying Amendment**

Contractors who apply or bid for an award of **\$100,000 or more** shall file the required certification in Exhibit 1 – Byrd Anti-Lobbying Certification below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

## **9. Procurement of Recovered Materials**

Under [2 CFR 200.322](#), Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

- (1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
  - a. Competitively within a timeframe providing for compliance with the contract performance schedule;
  - b. Meeting contract performance requirements; or
  - c. At a reasonable price.
- (2) Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

## **10. Additional FEMA Contract Provisions.**

The following provisions apply to purchases that will be paid for in whole or in part with funds obtained from the Federal Emergency Management Agency (FEMA):

- (1) Access to Records. The following access to records requirements apply to this contract:
  - a. The Contractor agrees to provide the State, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
  - b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
  - c. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
  - d. In compliance with the Disaster Recovery Act of 2018, the State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

- (2) Changes.  
See the provisions regarding modifications or change notice in the Contract Terms.
- (3) DHS Seal, Logo, And Flags.  
The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
- (4) Compliance with Federal Law, Regulations, and Executive Orders.  
This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- (5) No Obligation by Federal Government.  
The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the State, Contractor, or any other party pertaining to any matter resulting from the Contract.”
- (6) Program Fraud and False or Fraudulent Statements or Related Acts.  
The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.

Schedule E, Attachment 1 - Byrd Anti-Lobbying Certification

Contractor must complete this certification if the purchase will be paid for in whole or in part with funds obtained from the federal government and the purchase is greater than \$100,000.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, Kunz Leigh & Associates certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

**E-SIGNED by Justin Shaulis**  
**on 2021-09-30 08:47:35 EDT**

\_\_\_\_\_  
Signature of Contractor's Authorized Official

**Justin Shaulis** **Partner**

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

**2021-09-30 08:47:35 UTC**

\_\_\_\_\_  
Date