STATE OF MICHIGAN
CENTRAL PROCUREMENT SERVICES
Department of Technology, Management, and Budget

525 W. ALLEGAN ST., LANSING, MICHIGAN 48913
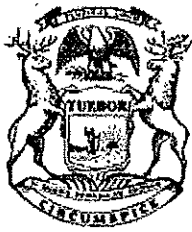P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **2**

to

Contract Number **180000000121**

CONTRACTOR		STATE		
MICHIGAN INTERACTIVE LLC		Program Manager	Cindy Peruchietti	DTMB
			517241-1842	
25501 West Valley Parkway, Suite 300			PercuchiettiC@michigan.gov	
Olathe, KS 66061		Contract Administrator	Mike Breen	DTMB
Scott Somerhalder			(517) 249-0428	
913-302-3143			breenm@michigan.gov	
scotts@egov.com				
CV0003206				

CONTRACT SUMMARY			
E-GOVERNMENT AND TRANSACTION-FUNDED SERVICES			
INITIAL EFFECTIVE DATE	**INITIAL EXPIRATION DATE**	**INITIAL AVAILABLE OPTIONS**	**EXPIRATION DATE BEFORE**
November 17, 2017	November 16, 2019	3 - 1 Year	November 16, 2019
PAYMENT TERMS		**DELIVERY TIMEFRAME**	

ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
☐ P-Card	☐ PRC	☐ Other	☐ Yes	☒ No

MINIMUM DELIVERY REQUIREMENTS

DESCRIPTION OF CHANGE NOTICE				
OPTION	**LENGTH OF OPTION**	**EXTENSION**	**LENGTH OF EXTENSION**	**REVISED EXP. DATE**
☒	12 months	☐		November 16, 2020
CURRENT VALUE	**VALUE OF CHANGE NOTICE**	**ESTIMATED AGGREGATE CONTRACT VALUE**		
$15,000,000.00	$0.00	$15,000,000.00		

DESCRIPTION
Effective with mutual signature the contract is amended to exercise a one year option to 11/16/2020. All other terms and conditions remain the same.

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

<u>CONTRACT CHANGE NOTICE</u>

Change Notice Number **1**

to

Contract Number **180000000121**

CONTRACTOR	Michigan Interactive, LLC	**STATE**	Steve Wensko	DTMB-IT
	25501 West Valley Parkway, Suite 300		810-210-2356	
	Olathe, KS 66061		wenskos@Michigan.gov	
	Scott Somerhalder		Malu Natarajan	DTMB
	913-302-3143		(517) 284-7030	
	scotts@egov.com		natarajanm@michigan.gov	
	*******0531			

CONTRACT SUMMARY			
E-GOVERNMENT AND TRANSACTION-FUNDED SERVICES			
INITIAL EFFECTIVE DATE	**INITIAL EXPIRATION DATE**	**INITIAL AVAILABLE OPTIONS**	**EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW**
November 17, 2017	November 16, 2019	3 - 1 Year	November 16, 2019
PAYMENT TERMS		**DELIVERY TIMEFRAME**	
		N/A	
ALTERNATE PAYMENT OPTIONS			**EXTENDED PURCHASING**
☐ P-Card	☐ Direct Voucher (DV)	☐ Other	☒ Yes	☐ No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
OPTION	**LENGTH OF OPTION**	**EXTENSION**	**LENGTH OF EXTENSION**	**REVISED EXP. DATE**
☐		☐		November 16, 2019
CURRENT VALUE	**VALUE OF CHANGE NOTICE**		**ESTIMATED AGGREGATE CONTRACT VALUE**	
$15,000,000.00	$0.00		$15,000,000.00	

DESCRIPTION

Effective January 29, 2018, the parties hereby agree to amend the Contract to add the following section to the Contract Terms:

36.21 Extended Purchasing Program.   This Contract is extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at www.michigan.gov/mideal. Upon written agreement between the State and Contractor, this Contract may also be extended to: (a) State of Michigan employees, (b) the Legislative and Judicial branches of the State of Michigan, and © other states (including governmental subdivisions and authorized entities).

If extended, Contractor must supply all Services and Deliverables at the established Contract prices and terms. The State reserves the right to impose an administrative fee (not to exceed 1% of the Fees or Transaction Fees, as applicable) and negotiate additional discounts based on any increased volume generated by such extensions.

Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and

individual basis.

All other terms, conditions, specifications, and pricing remain the same per Contractor and Agency agreement, and DTMB approval.

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET
PROCUREMENT

525 W. ALLEGAN STREET	P.O. BOX 30026
LANSING, MI 48933	LANSING, MI 48909

NOTICE OF CONTRACT NO. 171 180000000121
between
THE STATE OF MICHIGAN
and
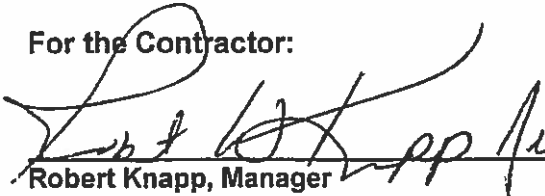
NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Michigan Interactive, LLC **25501 West Valley Parkway, Suite 300** Olathe, KS 66061	Scott Somerhalder	scotts@egov.com
	PHONE	**VENDOR TAX ID #** **(LAST FOUR DIGITS ONLY)**
	913-302-3143	0531

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
STATE PROGRAM MANAGER	**DTMB – IT Executive Office**	**W. Steve Wensko**	810-210-2356	wenskos@michigan.gov
STATE CONTRACT ADMINISTRATOR	**DTMB – Procurement**	**Malu Natarajan**	517-284-7030	natarajannm@michigan.gov

CONTRACT SUMMARY Com-code 920-05			
DESCRIPTION: E-Government and Transaction-Funded Services			
INITIAL TERM	**EFFECTIVE DATE**	**INITIAL EXPIRATION DATE**	**AVAILABLE OPTIONS**
2 Years	November 17, 2017	November 16, 2019	3; 1-Yr
PAYMENT TERMS	**F.O.B.**	**SHIPPED TO**	
Net 45	**NA**	**NA**	

ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
☐ P-card	☐ Direct Voucher (DV)	☐ Other	☐ Yes	☒ No

MINIMUM DELIVERY REQUIREMENTS
N/A

MISCELLANEOUS INFORMATION
THIS IS NOT AN ORDER. This Contract is awarded via the competitive solicitation process of the state of Montana and is entered into cooperatively in accordance with MCL 18.1261(7); DTMB Procurement Policy Guide, Chapter 5, Section 5.7.5; Chief Procurement Officer approval; and State Administrative Board approval dated 4/11/2017.

ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION	$15,000,000.00

1

For the Contractor:

Robert Knapp, Manager
Michigan Interactive, LLC

11/15/17

Date

For the State:

Heather Calahan
IT Category Director
State of Michigan

11/16/17

Date

STATE OF MICHIGAN

CONTRACT TERMS
Software Contract

This Software Contract (this "**Contract**") is agreed to between the State of Michigan (the "**State**") and Michigan Interactive, LLC ("**Contractor**"), a Michigan limited liability company. This Contract is effective on November 17, 2017 ("**Effective Date**"), and unless earlier terminated, will expire on November 16, 2019 (the "**Term**"). This Contract may be renewed for up to 3 additional one-year periods. Renewal and extension must be by written notice from the State and automatically extends the Term of this Contract. No Engagement SOW may extend beyond the Term of this Contract.

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

"**Acceptance**" has the meaning set forth in **Section 13.6**.

"**Acceptance Tests**" means such tests as may be conducted in accordance with **Section 13** of this Contract, or as specified in an Engagement SOW, to determine whether the Software meets the requirements of this Contract, the applicable Engagement SOW, and the Documentation.

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

"**Allegedly Infringing Materials**" has the meaning set forth in **Section 29.3(b)(ii)**.

"**API**" means all application programming interfaces and associated API Documentation provided by Contractor, and as updated from time to time, to allow the Software to integrate with various State and Third-Party software applications.

"**Approved Open-Source Components**" means Open-Source Components that may be included in or used in connection with the Software and are specifically identified in an exhibit to an Engagement SOW, and approved by the State.

"**Authorized Users**" means all Persons authorized by the OSA to access and use the Software under an Engagement SOW, which includes State administrative users and End Users.

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

"**Business Owner**" is the individual appointed by the OSA to (a) act as the agency's representative in all matters relating to the Engagement SOW, and (b) co-sign off on notice of Acceptance for the Software. The Business Owner must be identified in the Engagement SOW.

"**Business Requirements Specification**" means the initial specification setting forth the OSA's business requirements regarding the features and functionality of the Software, as set forth in the Engagement SOW.

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

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

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

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

"**Confidential Information**" has the meaning set forth in **Section 22.1**.

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

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

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

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

"**Contractor Personnel**" means all employees of Contractor or any Permitted Subcontractors (including Third-Party staff augmentation) involved in the performance of Services hereunder.

"**Contractor's Test Package**" has the meaning set forth in **Section 12.2**.

"**COTS**" means a commercial-off-the shelf Software application with little to no need for Customization.

"**Customization**" mean State-specific changes made to Pre-Existing Software with Source Code or structural data model changes occurring.

"**Deliverables**" means the Software, and all other documents and other materials that Contractor is required to or otherwise does provide to the State under an Engagement SOW and

otherwise in connection with any Services, including all items specifically identified as Deliverables in an Engagement SOW.

"**Dispute Resolution Procedure**" has the meaning set forth in **Section 35.1**.

"**Documentation**" means all generally available documentation relating to the Software, including user manuals, operating manuals, technical manuals, and any other instructions, specifications, documents or materials, in any form or media, that describe the functionality, installation, testing, operation, use, maintenance, support, technical, or other components, features, or requirements of the Software.

"**DTMB**" means the Michigan Department of Technology, Management and Budget.

"**Effective Date**" has the meaning set forth in the preamble.

"**End Users**" means members of the general public who will be accessing electronic information through the Software, and who may be charged a Transaction Fee by Contractor for such use. For clarity, State Representatives are not considered End Users under this definition unless they utilize the Software in a personal and not governmental capacity.

"**Engagement SOW**" means a statement of work entered into by the OSA and Contractor for the provision of specified Services and Deliverables by the Contractor or its Subcontractor.

"**Fees**" means collectively, all fees payable by the State to Contractor under an Engagement SOW.

"**Financial Audit Period**" has the meaning set forth in **Section 33.1**.

"**Force Majeure**" has the meaning set forth in **Section 36.1(a)**.

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

"**HIPAA**" has the meaning set forth in **Section 21.1**.

"**Rate Card**" means the established hourly rates to be charged by Contractor to an OSA under an Engagement SOW that is using a time-and-materials-based payment structure, which is attached as **Schedule B** to this Contract.

"**Implementation Plan**" means the attachment included in the Engagement SOW setting forth the sequence of events for the performance of Services under the Engagement SOW, including the Milestones and Milestone Dates.

"**Initial SOW**" means the initial statement of work entered into by the parties and attached as **Schedule A** to this Contract.

"**Integration Testing**" has the meaning set forth in **Section 13.1(c)**.

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

"**Key Personnel**" means any Contractor Personnel identified as key personnel in the Initial SOW or an Engagement SOW.

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

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

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

"**Maintenance and Support Schedule**" means, the schedule attached as **Schedule C**, setting forth the Support Services Contractor will provide to the OSA if the Software is internally hosted by the State, and the parties' additional rights and obligations with respect thereto.

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

"**Milestone**" means an event or task described in the Implementation Plan under the Engagement SOW that must be completed by the corresponding Milestone Date.

"**Milestone Date**" means the date by which a particular Milestone must be completed as set forth in the Implementation Plan under the Engagement SOW.

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

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

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

"**Open-Source License**" has the meaning set forth in **Section 5**.

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

"**OSA**" stands for "ordering State agency" and means the State agency purchasing Software, Services, or Deliverables from Contractor pursuant to an executed Engagement SOW.

"**Permitted Affiliate**" has the meaning set forth in **Section 10.4**.

"**Permitted Subcontractor**" has the meaning set forth in **Section 10.4**.

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

"**Pre-Existing Software**" means software that was developed or otherwise acquired by Contractor prior to the date of the Engagement SOW to which it relates, or has been developed by Contractor outside of its performance under the Engagement SOW to which it relates.

"**Privacy Policy**" means the policy displayed by Contractor to End Users that discloses the ways the Contractor gathers, users, discloses, and manages an End User's data. Contractor

must obtain written approval from the State prior to posting or modifying the Privacy Policy on webpages and Software provided to the State under this Contract.

"**Project Manager**" is the individual appointed by each party to (a) monitor and coordinate the day-to-day activities of an Engagement SOW, and (b) for the OSA, to co-sign off on its notice of Acceptance for the Software. Each party's Project Manager must be identified in the Engagement SOW.

"**Representatives**" means a party's employees, contractors, officers, directors, partners, shareholders, agents, attorneys, successors and permitted assigns.

"**SaaS**" means software-as-a-service, in which the State has access to a multi-tenant, distributed Software environment (including the application layer), which is managed and maintained by Contractor, with the possible exception of limited user-specific application configuration settings.

"**Services**" means any of the services Contractor is required to or otherwise does provide under this Contract, the Engagement SOW, the Maintenance and Support Schedule (if applicable), or the Service Level Agreement (if applicable).

"**Service Level Agreement**" means, the service level agreement attached as **Schedule D** to this Contract for use if the Software is externally hosted, which sets forth Contractor's obligations with respect to the hosting, management and operation of the Software.

"**Site**" means the physical location designated by the State in the Engagement SOW for delivery and installation of the Software.

"**Software**" means software provided or developed by Contractor for an OSA pursuant to an Engagement SOW, and any Maintenance Releases and New Versions provided to the State and any Configurations, Customizations, or APIs made by or for the State pursuant to the Engagement SOW, and all copies of the foregoing permitted under the Engagement SOW and any associated License Agreement.

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

"**Specifications**" means, for the Software, the specifications collectively set forth in the Business Requirements Specification, Technical Specification, and Documentation for such Software, or elsewhere in the Engagement SOW.

"**State**" means the State of Michigan.

"**State Data**" has the meaning set forth in **Section 21.1**.

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

"**State Resources**" has the meaning set forth in **Section 11.1(a)**.

"**Stop Work Order**" has the meaning set forth in **Section 27**.

"**SUITE**" means the State Unified Information Technology Environment, which includes standards for project management, systems engineering, and associated forms and templates that must be followed by Contractor, and is available at http://www.michigan.gov/suite.

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

"**Technical Specification**" means, with respect to any Software, the document setting forth the technical specifications for such Software and included in the Engagement SOW.

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

"**Terms of Use**" means the statement displayed by Contractor to End Users that discloses required information, grants End Users rights to use the website, and may impose acceptable use obligations, limitations on warranties, and a disclaimer of liability, and similar. Contractor must obtain written approval from the State prior to posting or modifying End User Terms of Use on webpages and Software provided to the State under this Contract.

"**Test Data**" has the meaning set forth in **Section 12.2**.

"**Testing Period**" has the meaning set forth in **Section 13.1(b)**.

"**Test Results**" has the meaning set forth in **Section 12.2**.

"**Third Party**" means any Person other than: the State, Contractor, and Contractor's Affiliates.

"**Third-Party Software**" means software, content, and technology, in any form or media, in which any Person (other than the State, Contractor or Contractor's Affiliates) owns any Intellectual Property Right, but excluding Open-Source Components.

"**Transaction Fee**" means a one-time fee charged to End Users by Contractor for access and use of the Software.

"**Transition Period**" has the meaning set forth in **Section 26.3**

"**Transition Responsibilities**" has the meaning set forth in **Section 26.3**.

"**Unauthorized Removal**" has the meaning set forth in **Section 10.3(b)**.

"**Unauthorized Removal Credit**" has the meaning set forth in **Section 10.3(c)**.

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

"**Warranty**" means Contractor's obligations with respect to remediating defects during the Warranty Period.

"**Warranty Period**" means the warranty period, if any, specified in the Engagement SOW.

"**Work Product**" means all API's and State-specific computer scripts, macros, user interfaces, reports, project management documents, forms, templates, and other State-specific documents and related materials that is not a derivative work of Pre-Existing Software of Contractor or its Affiliates.

2. Engagement SOW. Contractor must provide Services and Deliverables to OSAs pursuant to an Engagement SOW. The terms and conditions of this Contract apply at all times to all Engagement SOWs. The State may terminate, in whole or in part, an Engagement SOW as set forth in **Section 26**. Contractor acknowledges that time is of the essence with respect to Contractor's obligations under the Engagement SOW and agrees that prompt and timely performance of all such obligations in accordance with this Contract and the Engagement SOW (including the Implementation Plan and all Milestone Dates) is strictly required.

2.1 Engagement SOW Requirements. Engagement SOWs must include the following:

(a) project background and objective;

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

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

(d)   a detailed description of the Services to be provided under the Engagement SOW, including any training obligations of Contractor;

(e)   a detailed description of the Software to be provided under the Engagement SOW, including the:

(i)   version and release number of the Software, if applicable;

(ii)   Business Requirements Specification (including gap analysis on OSA's business needs and Contractor's Pre-Existing Software);

(iii)   Technical Specification; and

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

(f)   a detailed description of all Deliverables to be provided under the Engagement SOW (to the extent not already identified above);

(g)   an Implementation Plan that follows the State's SUITE methodology, including all Milestones, the corresponding Milestone Dates and the parties' respective responsibilities under the Implementation Plan;

(h)   a detailed description of proposed disaster recovery and business continuity plans, as applicable;

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

(j)   a detailed description of all Transaction Fees, if any, intended to be collected by Contractor, including any OSA revenue sharing or credit-back provisions that apply to such Transaction Fees;

(k)   disclosure of all Open-Source Components or Third-Party Software (each identified on a separate exhibit to the Engagement SOW), in each case accompanied by such related documents as may be required by the Engagement SOW;

(l)   description of all liquidated damages associated with the Engagement SOW, if any; and

(m)   a detailed description of all State Resources required to complete the Implementation Plan;

(n)   a detailed description of all hardware and other equipment required; and

(o)   other information as the State may require in the submitted Work Order

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

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

(i)   a written description of the proposed Changes to any Services or Deliverables;

(ii)   an amended Implementation Plan reflecting: (A) the schedule for commencing and completing any additional or modified Services or Deliverables; and (B) the effect of such Changes, if any, on completing any other Services under the Engagement SOW;

(iii)   any additional State Resources Contractor deems necessary to carry out such Changes; and

(iv)   any increase or decrease in Fees or Transaction Fees resulting from the proposed Changes, which increase or decrease will reflect only the increase or decrease in time and expenses Contractor requires to carry out the Change.

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

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

(i)   require Contractor to perform the Services under the Engagement SOW without the Change;

(ii)   require Contractor to continue to negotiate a Change Notice;

(iii)   initiate a Dispute Resolution Procedure; or

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(iv)   notwithstanding any provision to the contrary in the Engagement SOW, terminate the Engagement SOW under **Section 26**.

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

(e)   The performance of any functions, activities, tasks, obligations, roles and responsibilities comprising the Services as described in this Contract or the applicable Engagement SOW are considered part of the Services and, thus, will not be considered a Change. This includes the delivery of all Deliverables in accordance with their respective Specifications, and the diagnosis and correction of Non-Conformities discovered in Deliverables prior to their Acceptance by the State or, subsequent to their Acceptance by the State, as necessary for Contractor to fulfill its associated warranty requirements and its Support Services under the Engagement SOW.

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

3.   Software License for Pre-Existing Software. Contractor will attach a license agreement to each Engagement SOW for all Pre-Existing Software, specifying the type of license granted to the OSA and its Authorized Users for use of the Pre-Existing Software (a "**License Agreement**").

4.   Third-Party Software Licenses. Any use of Third-Party Software will be governed by, and subject to, the terms and conditions of the applicable Third-Party Software license agreement ("**Third-Party License**"). The State must approve of any Third-Party Software prior to its use, and Contractor must identify and describe in an exhibit to the Engagement SOW such Third-Party Software being used in connection with the Services under such Engagement SOW. Unless otherwise expressly stated in an Engagement SOW, and notwithstanding anything to the contrary set forth herein: (a) the sole maintenance and support services for Third-Party Software provided hereunder will be the maintenance and support services provided through a Third Party License by such third party, (b) Contractor shall pass through all warranties offered by such third party owner of the Third Party Software, but otherwise such Third Party Software shall be excluded from the Warranty Period obligations set forth herein, and (c) Third Party Software is excluded from the representations and warranties set forth in **Section 28.3** and the infringement remedies in **Section 29.3**, and the use of Third-Party Software following a Contractor bankruptcy is limited to the transferable rights available to State under the applicable Third Party License.

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

6. Software Implementation.

6.1   Implementation. Contractor must deliver, install, configure, integrate, and otherwise provide and make fully operational the Software on or prior to the applicable Milestone Date in accordance with the criteria set forth in the Engagement SOW.

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

7. Hosting. Unless otherwise set forth in the Engagement SOW, if the Operating Environment for the Software is externally hosted by Contractor or a subcontractor, Contractor must maintain the Availability Requirement and the Support Service Level Requirement set forth in the Service Level Agreement attached as **Schedule D** to this Contract.

8. Support Services.

8.1   Support Services for On-Premise Software. Unless otherwise set forth in the Engagement SOW, if the Operating Environment for the Software is internally hosted by the State, Contractor must provide the State with the Support Services described in the Maintenance and Support Schedule attached as **Schedule C** to this Contract.

8.2   Support Services for Externally Hosted Software. Unless otherwise set forth in the Engagement SOW, if the Operating Environment for the Software is externally hosted by Contractor or a subcontractor, Contractor must provide the State with the Support Services described in the Service Level Agreement attached as **Schedule D** to this Contract.

9. Data Privacy and Information Security.

9.1   Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c)

protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all Contractor Representatives comply with all of the foregoing. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards. Publicly posted policies and standards are available here: http://www.michigan.gov/dtmb/0,4568,7-150-56355_56579_56755---,00.html. Other applicable policies and standards may require the execution of a nondisclosure agreement.

9.2 Access to State's System. To the extent that Contractor has access to the State's computer system, Contractor must comply with the State's Acceptable Use of Technology Standard, 1340.00.130.02, available at the link under the preceding section. 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.

9.3 Right of Audit by the State. Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Services and from time to time during the term of this Contract. During the providing of Services, on an ongoing basis from time to time, 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 as set forth in Schedule E. In lieu of an on-site audit, upon request by the State, Contractor agrees to complete, within forty-five (45) calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.

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

9.5 State's Right to Termination for Deficiencies. The State reserves the right, at its sole election, to immediately terminate this Contract or an Engagement SOW without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this **Section 9**.

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

10. Performance of Services. Contractor must provide all Services and Deliverables in a timely, professional and workmanlike **manner** and in accordance with the terms, conditions, and Specifications set forth in this Contract, the Initial SOW, and the Engagement SOW.

10.1 Contractor Personnel.

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

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

    (i)   ensure that such Contractor Personnel have the legal right to work in the United States;

    (ii)   upon request, require such Contractor Personnel to execute written agreements, in form and substance acceptable to the State, that bind such Contractor Personnel to confidentiality provisions that are at least as protective of the State's information (including all Confidential Information) as those contained in this Contract; and

    (iii)   the State may perform background checks on Contractor Personnel in accordance with the requirements set forth in the Engagement SOW.

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

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

10.2 Contractor's Project Manager. Throughout the term of an Engagement SOW, Contractor must maintain a Contractor employee acceptable to the State to serve as Contractor's Project Manager, who will be considered Key Personnel of Contractor. Contractor's Project Manager must be identified in the Engagement SOW.

(a)   Contractor's Project Manager must:

    (i)   have the requisite authority, and necessary skill, experience, and qualifications, to perform in such capacity;

    (ii)   be responsible for overall management and supervision of Contractor's performance under the Engagement SOW; and

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(iii)   be the State's primary point of contact for giving and receiving all day-to-day approvals and consents.

(b)   Contractor's Project Manager must attend all regularly scheduled meetings as set forth in the Implementation Plan, and will otherwise be available and perform the duties as set forth in the Engagement SOW.

(c)   Contractor will maintain the same Project Manager throughout the term of the Engagement SOW, unless:

(i)   the State requests in writing the removal of Contractor's Project Manager;

(ii)   the State consents in writing to any removal requested by Contractor in writing, which consent shall not be unreasonably withheld;

(iii)   Contractor's Project Manager ceases to be employed by Contractor, whether by resignation, involuntary termination or otherwise, or for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, or personal emergency circumstances.

(d)   Contractor will promptly replace its Project Manager on the occurrence of any event set forth in **Section 10.2(c)**. Such replacement will be subject to the State's prior written approval.

10.3 <u>Contractor's Key Personnel</u>.

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

(b)   Contractor must not remove any Key Personnel from their assigned roles on an Engagement SOW without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent, which consent shall not be unreasonably withheld, 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 the Engagement SOW, in respect of which the State may elect to terminate the Engagement SOW for cause under **Section 26.1**.

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(c)   It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Engagement SOW, 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 26.1**, Contractor will issue to the State an amount equal to $15,000 per individual (each, an "**Unauthorized Removal Credit**").

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

10.4 Subcontractors and Affiliates. 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 or Affiliate to perform Services. The State's approval of any such Third Party or Affiliate (a "**Permitted Subcontractor**") does not relieve Contractor of its representations, warranties, or obligations under this Contract. Without limiting the foregoing, Contractor will:

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

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

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

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

11. State Obligations.

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

(a)   providing the State Materials and such other resources as may be specified in the Engagement SOW (collectively, "**State Resources**"); and

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

11.2 State Project Manager. Throughout the term of an Engagement SOW, the State will maintain an individual to serve as the OSA's Project Manager under the Engagement SOW. The State's Project Manager will be identified in the Engagement SOW. The State's Project Manager will be available as set forth in the Engagement SOW.

12. Pre-Delivery Testing.

12.1 Testing By Contractor. Before delivering and installing the Software, Contractor must, unless otherwise specified in the Engagement SOW:

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

(b)   scan the Software source code using industry standard scanning software and up-to-date vulnerability definitions to confirm it is free of Harmful Code and coding vulnerabilities;

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

(d)   all testing and scanning must be inclusive of Third Party-supplied code if such code is to be used as part of the application.

12.2 Test Data and Estimates. Unless otherwise specified in the Engagement SOW, Contractor must provide to the State all test data and testing scripts used by Contractor for its pre-delivery testing ("**Test Data**"), together with the results Contractor expects to be achieved by processing the Test Data using the Software ("**Test Results**," and together with Test Data, "**Contractor's Test Package**").

13. Acceptance Testing.

13.1 Acceptance Testing.

(a)   Unless otherwise specified in the Engagement SOW, upon installation of the Software, Acceptance Tests will be conducted as set forth in this **Section 13** to ensure the Software conforms to the requirements of the Engagement SOW, including the applicable Specifications and Documentation. The State may, but is not obligated, to perform its own pretest on the Software utilizing Contractor's Test Package. If the State does perform a pretest, and Contractor's Test Package does not conclusively illustrate that the Test Results match the actual results of the pretest, the State, at its discretion, is not obligated to move into the formal Acceptance Tests set forth in this Section. The State may elect to send Contractor's Test

Package back to Contractor to correct any problems encountered with the Test Data or Test Results.

(b)   All Acceptance Tests will take place at the designated Site(s) in the testing environment described in the Engagement SOW, commence on the Business Day following installation of the Software and be conducted for the period set forth in the Implementation Plan (the "**Testing Period**"). Acceptance Tests will be conducted by the party responsible as set forth in the Engagement SOW or, if the Engagement SOW does not specify, the State, provided that:

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

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

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

(c)   Upon delivery and installation of any API, Configuration, or Customization to the Software under the Engagement SOW, additional Acceptance Tests will be performed on the modified Software as a whole to ensure full operability, integration, and compatibility among all elements of the Software ("**Integration Testing**"). Integration Testing is subject to all procedural and other terms and conditions set forth in **Section** 13 and the Engagement SOW.

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

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

(a)   If such notice is provided by either party and identifies any Non-Conformities, the parties' rights, remedies, and obligations will be as set forth in **Section 13.3** and **Section 13.5**.

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

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

(i)   notify Contractor in writing of Non-Conformities the State has observed in the Software and of the State's non-acceptance thereof, whereupon the parties' rights, remedies and obligations will be as set forth in **Section 13.3** and **Section 13.5**; or

(ii)   provide Contractor with a written notice of its Acceptance of such Software, which must be signed by the State's Business Owner and Project Manager.

13.3   Escalation. If the State fails to identify any Non-Conformities and fails to provide notice of Acceptance within the thirty (30) Business Day period, Contractor may escalate the matter utilizing the Dispute Resolution Procedure described in **Section 35** below.

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

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

(b)   receipt of the State's notice under **Section 13.1(a)** or **Section 13.2(c)(i)**, identifying any Non-Conformities.

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

(a)   continue the process set forth in this **Section 13**;

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

(c)   deem the failure to be a non-curable material breach of the Engagement SOW and terminate the Engagement SOW for cause in accordance with **Section 26.1**.

13.6 Acceptance. Acceptance ("**Acceptance**") of the Software (subject, where applicable, to the State's right to Integration Testing) will occur on the date that is the earliest of the State's delivery of a notice accepting the Software under **Section 13.2(b)**, or **Section 13.2(c)(ii)**.

14. Training. Contractor must provide training on all uses of the Software permitted hereunder in accordance with the times, locations, and other terms set forth in the Engagement SOW, and pursuant to such rates and other terms as are set forth in the Rate Card.

15. Maintenance Releases; New Versions.

15.1 Maintenance Releases. Unless otherwise set forth in the Engagement SOW, Contractor must provide the State, at no additional charge, with all Maintenance Releases for SaaS and COTS solutions, each of which will constitute Software and be subject to the terms and conditions of this Contract and any applicable License Agreement.

15.2 New Versions. Unless otherwise set forth in the Engagement SOW, Contractor must provide the State, at no additional charge, with all New Versions of SaaS and COTS solutions, each of which will constitute Software and be subject to the terms and conditions of this Contract and any applicable License Agreement.

15.3 Installation. Contractor must adhere to the State's configuration management policies and procedures when installing any Maintence Releases or New Versions, including providing the State adequate notice prior to pushing such installation. The State may elect not to install a Maintenance Release or New Version if it materially affects the security or functionality of the Software. Contractor must provide the State, at no additional charge, adequate Documentation for installation of the Maintenance Release or New Version, which has been developed and tested by Contractor and Acceptance Tested by the State.

16. Source Code Escrow.

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

17. Services Funded by Fees. If Contractor is charging any Fees to the OSA for Software, Services, or Deliverables, the following provisions apply:

17.1 Fees. Fees for all Software, Services, and Deliverables provided by Contractor will be set forth in the individual Engagement SOW. If such Services are provided on a time-and-materials basis, the established Rate Card will apply. Such Rate Card is firm and fixed during the initial Term, and will not be increased during the initial Term of this Contract. If the State renews the Contract, Contractor's hourly rates may not increase by more than 3% of the preceding Rate Card, and an increase in such rates is not effective until approved by the State in writing and formalized in a Change Notice amending **Schedule B**.

17.2 Invoices. Contractor will invoice the State for Fees in accordance with the requirements set forth in the Engagement SOW, including any requirements that condition the rendering of invoices and the payment of Fees upon the successful completion of Milestones. Contractor must submit each invoice by email to DTMB-Accounts-Payable@michigan.gov, with a copy to the State Program Manager, State Project Manager, and OSA Business Owner, or via such delivery means and to such address as are specified by the State in the Engagement SOW.

17.3 Payment. Invoices are due and payable by the State, in accordance with the State's standard payment procedures as specified in MCL 17.51, *et seq.*, within forty-five (45) calendar days after receipt, provided the State determines that the invoice was properly rendered. The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at http://www.michigan.gov/SIGMAVSS to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment.

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

17.5 Payment Disputes. The State may withhold from payment any and all payments and amounts the State disputes in good faith, pending resolution of such dispute, provided that the State:

(a) timely renders all payments and amounts that are not in dispute;

(b) notifies Contractor of the dispute prior to the due date for payment, specifying in such notice:

(i) the amount in dispute; and

(ii) the reason for the dispute set out in sufficient detail to facilitate investigation by Contractor and resolution by the parties;

(c) works with Contractor in good faith to resolve the dispute promptly; and

(d) promptly pays any amount determined to be payable by resolution of the dispute.

Contractor must not withhold any Services or fail to perform any obligation hereunder by reason of the State's good faith withholding of any payment or amount in accordance with this **Section 17.5** or any dispute arising therefrom.

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

17.7 Responsibility for Costs. Contractor is responsible for all costs and expenses incurred in or incidental to the performance of the Services, including but not limited to all travel costs, and all other costs of doing business.

17.8 Availability and Service Level Credits. Contractor acknowledges and agrees that each of the Service Availability Credits and Service Level Credits (assessed pursuant to the Service Level Agreement), and the Service Credits (assessed pursuant to the Maintenance and Support Schedule), respectively: (a) is a reasonable estimate of and compensation for the anticipated or actual harm to the State that may arise from the corresponding Service Error or Service Level Failure, which would be impossible or very difficult to accurately estimate; and (b) may, at the State's option, be credited or set off against any Fees or other charges payable to Contractor under this Contract or be payable to the State upon demand. No Service Availability Credits, Service Level Credits, Service Credits or combination thereof associated with Services compensated with Fees, for any Service Period may exceed the total amount of Fees that would be payable for that Service Period if the Services were fully provided in accordance with this Contract and the Specifications. See also **Section 31** below.

18. Payment Processing. If Services and Deliverables involve payment processing or utilize Transaction Fees, the following provisions apply:

18.1 CEPAS Electronic Receipt Processing Standard. All electronic commerce applications that allow for electronic receipt of credit or debit card and electronic check transactions must be processed via the State's Centralized Electronic Payment Authorization System (CEPAS), unless the OSA obtains an exception under the State's Electronic Receipt Processing Standard, Technical Standard No. 1340.00.170.02 or other applicable policy. To minimize the risk to the State, full credit/debit card numbers, sensitive authentication data, and full bank account information must never be stored on State-owned IT resources. Upon request, the State Program Manager will provide a copy of the CEPAS Integration Guide, as well as pertinent State policies, procedures, and standards, including Technical Standard No. 1340.00.170.02, *Electronic Receipt Processing Standard*.

19. Intellectual Property Rights.

19.1 Ownership Rights in Pre-Existing Software

(a) Subject to the rights and licenses granted by Contractor in this Contract and the applicable License Agreement, and the provisions of **Section 19.1(b)**:

(i) Contractor reserves and retains its entire right, title and interest in and to all Intellectual Property Rights arising out of or relating to any Pre-Existing Software; and

(ii) none of the State or Authorized Users acquire any ownership of Intellectual Property Rights in or to the Pre-Existing Software or related Documentation as a result of this Contract.

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

19.2 <u>Rights in Open-Source Components</u>. Ownership of all Intellectual Property Rights in Open-Source Components remains with the respective owners thereof, subject to the State's rights under the applicable Open-Source Licenses.

19.3 <u>Rights in Third-Party Software</u>. Ownership of all Third-Party Software, and all Intellectual Property Rights therein, is and will remain with its respective owners, subject to any express licenses or sublicenses granted to the State under this Contract and the Third-Party Licenses.

19.4 <u>Ownership Rights in Work Product</u>. Unless otherwise set forth in an Engagement SOW, 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:

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

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

(i) assigns, transfers, and otherwise conveys to the State, irrevocably and in perpetuity, throughout the universe, all right, title, and interest in and to such Work Product, including all Intellectual Property Rights; and

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

19.5 <u>License Back to Contractor</u>. Unless otherwise specified in the Engagement SOW, the State hereby grants Contractor an immediate, non-exclusive, irrevocable, worldwide, transferable, fully paid, royalty free, license to reproduce, modify, distribute, publicly perform, publicly display, and use any such Work Product, and any modifications, upgrades or enhancements thereto, in

each case without any restrictions, and to sublicense any or all such rights to all such Work Product to third parties.

19.6 <u>SaaS Solutions</u>. Contractor grants the State access to the functionality of and the right to use SaaS solutions identified in any Engagement SOW during the term of such SOW, and any mutually agreed to extensions of such term.

20. Terms of Use and Privacy Policy for End Users. Contractor must obtain written approval from the State prior to posting or modifying End User Terms of Use and the Privacy Policy on webpages and Software provided to the State under this Contract.

21. State Data.

21.1 <u>Ownership</u>. The State's data ("**State Data**"), which will be treated by Contractor as Confidential Information, includes: (a) User Data; and (b) any other data collected, used, processed, stored, or generated by the State in connection with the Services, including but not limited to (i) personal information (as defined under 2004 PA 452 at MCL 445.63 ("**PII**") collected, used, processed, stored, or generated as the result of the services; (ii) personal identifying information (as defined under 2004 PA 452 at MCL 445.63) collected, used, processed, stored, or generated as the result of the services; and (iii) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Services, which is defined under the Health Insurance Portability and Accountability Act ("**HIPAA**") and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This **Section 21.1** survives termination or expiration of this Contract.

21.2 <u>Contractor Use of State Data</u>.

(a) Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Services. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Contract, any applicable Engagement SOW, 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.

(b) If expressly provided in an Engagement SOW, the State may provide to Contractor a limited license to End User data for Contractor's business purposes; however, prior to becoming effective, such special licensing must be: permitted by law, approved in writing by the

OSA, DTMB, and Michigan Cyber Security, disclosed to End Users via Contractor's Privacy Policy, and approved as to legal form by the Michigan Department of Attorney General.

(c)   This **Section 21.2** survives termination or expiration of this Contract.

21.3   Loss or Compromise of Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise reasonably required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) with approval and assistance from the State, notify the affected individuals whose PII or PHI was compromised as soon as practicable but no later than is required to comply with applicable law; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twenty-four (24) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) pay for any costs associated with the occurrence, including but not limited to any costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution; (g) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (h) if an Engagement SOW requires Contractor to be the custodian of State Data, be responsible for recreating lost State Data in a mutually agreed manner and schedule without charge to the State; and (i) provide to the State a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, not be tangentially used for any solicitation purposes, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. The State will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification to any other party, including but not limited to public media outlets, must be reviewed and approved by the State in writing prior to its

dissemination. The State will cooperate with Contractor in order for expenses incurred in this Section to be approved and reimbursed by Contractor's network risk/cyber liability insurance policy. This **Section 21.3** survives termination or expiration of this Contract.

21.4 Data Retention. Specific data retention requirements for the State will be set forth in the Engagement SOW.

21.5 Discovery. If the Operating Environment for the Software is externally hosted by Contractor or a subcontractor, Contractor must immediately notify the State upon receipt of any requests which in any way might reasonably require access to State Data or the State's use of the Software. Contractor must notify the State by the fastest means available and also in writing. In no event will Contractor provide such notification more than twenty-four (24) hours after Contractor receives the request. Contractor must not respond to subpoenas, service of process, FOIA requests, and other legal requests related to State Data without first notifying State and obtaining the State's prior approval of Contractor's proposed responses. Contractor agrees to provide its completed responses to the State with adequate time for review, revision, and approval.

22. Confidential Information. Each party acknowledges that it may be exposed to or acquire communication or data of the other party that is confidential in nature and is not intended to be disclosed to third parties. This **Section 22** survives termination or expiration of this Contract.

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

22.2 Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than Representatives, 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 Representatives,

employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to the Contractor's subcontractor is permissible where: (a) the subcontractor is a Permitted Subcontractor; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Permitted Subcontractor's responsibilities; and (c) Contractor obligates the Permitted Subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any of the Contractor's Representatives may be required to execute a separate agreement to be bound by the provisions of this **Section 22.2**.

22.3 Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract. Each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

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

22.5 Surrender of Confidential Information upon Termination. Upon termination or expiration of this Contract or an Engagement SOW, in whole or in part, each party must, within five (5) Business Days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control. If Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and certify the same in writing within five (5) Business Days from the date of termination to the other party.

23. HIPAA Compliance. The State and Contractor must comply with all obligations under HIPAA and its accompanying regulations, including but not limited to entering into a business associate agreement, if reasonably necessary to keep the State and Contractor in compliance with HIPAA.

24. CJIS Compliance. If the Engagement SOW will include processing of Criminal Justice Information Services (CJIS) data, then the following section will apply. Contractor must comply with all CJIS requirements set forth by the State or any other governmental agency. If the Operating Environment for the Software is externally hosted by Contractor or a subcontractor,

Contractor or its subcontractor, if necessary, will enter into an FBI CJIS Security Addendum on behalf of the State.

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

26. Termination, Expiration, Transition. The State may terminate this Contract, the Support Services, or any Engagement SOW, in accordance with the following:

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

(a)   The State may terminate this Contract, the Support Services, or any Engagement SOW for cause, in whole or in part, if Contractor, as determined by the State: (i) endangers the value, integrity, or security of State Systems, State Data, or the State's facilities or personnel; (ii) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; or (iii) breaches any of its material duties or obligations under this Contract. If the Contractor breaches the Contract and the State, in its sole discretion, determines that the breach is curable, the State will provide the Contractor notice of the breach and a cure period; however, the State is not required to provide notice or an opportunity to cure under this subsection. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

(b)   If the State terminates under this **Section 26.1**, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of this Contract, the termination will be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in **Section 26.2**.

(c)   The State will only pay for amounts due to Contractor for Services accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. Contractor must promptly reimburse to the State any Fees prepaid by the State prorated to the date of such termination, including any prepaid Support Services Fees. Further, Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Services from other sources.

26.2 Termination for Convenience.

(a) Non-Transaction Funded Projects. The State may terminate any non-Transaction Funded Engagement SOW, in whole or in part, without penalty and for any reason, including but not limited to, appropriation or budget shortfalls, upon 90 calendar days' advance written notice.

(b) Transaction Funded Projects. The State may terminate any Transaction Funded Engagement SOW, in whole or in part, without penalty and for any reason, including but not limited to, appropriation or budget shortfalls, upon 90 calendar days' advance written notice, only after the Software provided through the Transaction Funded Engagement SOW has been in production for the State for two years (or a longer period of time if expressly agreed in an Engagement SOW).

(c) The termination notice will specify whether Contractor must: (a) cease performance immediately, or (b) continue to perform in accordance with **Section 26.3**. 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.

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

26.4 <u>Survival</u>. This **Section 26** survives termination or expiration of this Contract.

27. Stop Work Order. The State may, at any time, order the Services of Contractor fully or partially stopped for its own convenience for up to ninety (90) calendar days at no additional cost to the State. The State will provide Contractor a written notice detailing such suspension (a "**Stop Work Order**"). Contractor must comply with the Stop Work Order upon receipt. Within 90 days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate this Contract, the Support Services, or any Engagement SOW (to the extent permitted by **Section 26**). The State will not pay for any Services, Contractor's lost profits, or any additional compensation during a stop work period.

28. Contractor Representations and Warranties.

28.1 Authority. Contractor represents and warrants to the State that:

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

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

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

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

28.2 Representations and Warranties. Contractor represents and warrants to the State that:

(a)   As required by MCL 18.1261(12), 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;

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

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

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

(e)   If any of the certifications, representations, or disclosures made by Contractor change, the Contractor is required to report those changes immediately to the Contract Administrator.

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

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

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

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

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

      (i)   conflict with or violate any applicable Law;

      (ii)   require the consent, approval or authorization of any governmental or regulatory authority or other third party; or

      (iii)   require the provision of any payment or other consideration to any third party;

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

      (i)   infringe, misappropriate or otherwise violate any Intellectual Property Right or other right of any third party; or

      (ii)   fail to comply with any applicable Law;

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

(g)   all Documentation is and will be complete and accurate in all material respects when provided to the State;

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

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

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

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

29. Indemnification.

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

29.2 Indemnification Procedure. The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations. The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense, at its own cost and expense, if the proceeding involves issues of great importance to the State. Contractor will not, without the State's prior written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. Any litigation activity on behalf of the State or any of its subdivisions, under this **Section 29**, 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.

29.3 Infringement Remedies.

(a)   The remedies set forth in this **Section 29.3** are in addition to, and not in lieu of, all other remedies that may be available to the State under this Contract or otherwise, including the State's right to be indemnified for such actions.

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

(i)   procure for the State the right to continue to use such Software or component thereof to the full extent contemplated by the Engagement SOW; or

(ii)   modify or replace the materials that infringe or are alleged to infringe ("**Allegedly Infringing Materials**") to make the Software and all of its components non-infringing while providing fully equivalent features and functionality.

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

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

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

(d)   If Contractor directs the State to cease using any Software under **subsection (c)**, the State may terminate the Engagement SOW for cause under **Section 26.1**.

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

(i)   Contractor's compliance with any designs, specifications, or instructions of the State; or

(ii)   modification of the Software by the State without the prior knowledge and approval of Contractor; or

(iii)   use of the Software by the State or an Authorized User pursuant to this Contract in combination with any software or service not provided, authorized or approved by or on behalf of Contractor if no violation of third party rights would have occurred without such combination.

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

30. Liquidated Damages.

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

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

31. Monetary Remedies.

(a)   If the State chooses to exercise its rights under **Section 10.3(c)**, then the Unauthorized Removal Credits will be the State's exclusive monetary remedy for Unauthorized Removal.

(b)   Unless otherwise provided in an Engagement SOW, if an Engagement SOW includes provisions for liquidated damages and the State chooses to assess such liquidated damages, then such liquidated damages will be the exclusive monetary remedy for Contractor's breach of the Contract related to the assessed liquidated damages.

(c)   Service Availability Credits, Service Level Credits, and Service Credits are the State's exclusive monetary remedies for Contractor's failure to comply with the corresponding sections of the Service Level Agreement or Maintenance and Support Schedule, as applicable, or a Service Error or Service Level Failure.

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

32. Limitation of Liability. NEITHER PARTY WILL BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES. 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 NET FEES SPECIFIED IN THE ENGAGEMENT SOW APPLICABLE TO THE CLAIM. UNLESS OTHERWISE EXPRESSLY SET FORTH IN AN ENGAGEMENT SOW, IN NO EVENT WILL CONTRACTOR'S AGGREGATE LIABILITY TO THE STATE 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 GREATER OF (i) $2,000,000 OR (ii) THE FEES (INCLUDING ACTUAL TRANSACTION FEES PAID BUT EXCLUDING AMOUNTS PAID TO THE STATE) PAID PURSUANT TO THE ENGAGEMENT SOW GIVING RISE TO THE CLAIM IN THE PREVIOUS 12 MONTH PERIOD.

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

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

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

33.3 Application.   This **Section 33** applies to Contractor, any Affiliate, and any Permitted Subcontractor that performs Services in connection with this Contract.

34. Insurance.

34.1 Required Coverage.

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

Insurance Type	Additional Requirements
Commercial General Liability Insurance	
Limits: \$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 Aggregate Deductible Maximum: \$100,000 Each Occurrence	Contractor must have their policy endorsed to add or a blanket endorsement covering "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds.
Umbrella or Excess Liability Insurance	
Limits: \$5,000,000 General Aggregate	Contractor must have an endorsement (or blanket endorsement) covering "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds.
Automobile Liability Insurance	
Limits: \$1,000,000 Per Accident	Contractor must have an endorsement (or blanket endorsement) covering "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds.
Workers' Compensation Insurance	
Limits: Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Limits: \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Policy Aggregate by Disease	
Privacy and Security Liability (Cyber Liability) Insurance	
Limits: \$1,000,000 Each Claim \$1,000,000 Annual Aggregate	Contractor must have their policy cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.
Professional Liability (Errors and Omissions) Insurance	
Limits: \$3,000,000 Each Claim \$3,000,000 Annual Aggregate Deductible /Retention Maximum: \$500,000 Per Claim	

(b)   The minimum limits are not intended, and may not be construed, to limit any liability or indemnity of Contractor to any indemnified party of other persons.

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

(d)   Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days after the expiration date of the applicable policies; (b) unless otherwise provided in an Engagement SOW, 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.

34.2 Non-waiver. This **Section 34** 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).

35. Dispute Resolution.

35.1 Unless otherwise specified in the Engagement SOW, the parties will endeavor to resolve any Contract dispute in accordance with **Section 35** (the "**Dispute Resolution Procedure**"). The initiating party will reduce its description of the dispute to writing (including all supporting documentation) and deliver it to the responding party's Project Manager. The responding party's Project Manager must respond in writing within five (5) Business Days. The initiating party has five (5) Business Days to review the response. If after such review resolution cannot be reached, both parties will have an additional five (5) Business Days to negotiate in good faith to resolve the dispute. If the dispute cannot be resolved within a total of fifteen (15) Business Days, the parties must submit the dispute to the parties' Contract Administrators. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

35.2 Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' Contract Administrators, and either Contract Administrator concludes that resolution is unlikely, or fails to respond within fifteen (15) Business Days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a

determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This **Section 35** does not limit the State's right to terminate this Contract.

36. General Provisions.

36.1 <u>Force Majeure.</u>

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

(b) <u>State Performance; Termination</u>. In the event of a Force Majeure Event affecting Contractor's performance under this Contract, the State may suspend its performance hereunder until such time as Contractor resumes performance. The State may terminate this Contract by written notice to Contractor if a Force Majeure Event affecting Contractor's performance hereunder continues substantially uninterrupted for a period of thirty (30) Business Days or more. Unless the State terminates this Contract pursuant to the preceding sentence, any date specifically designated for Contractor's performance under this Contract will automatically be extended for a period up to the duration of the Force Majeure Event.

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

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

36.4 <u>Media Releases</u>. Except as required by applicable law, including securities laws, and NASDAQ rules, news releases (including promotional literature and commercial advertisements) pertaining to this Contract or project to which it relates must not be made without the prior written

approval of the State, and then only in accordance with the explicit written instructions of the State. In the event a news release is required to be made under applicable law, Contractor will use best efforts to provide the State 5 Business Days written notice prior to publication.

36.5 Notices. All notices, requests, consents, claims, demands, waivers and other communications under this Contract must be in writing and addressed to the parties as follows (or as otherwise specified by a party in a notice given in accordance with this **Section 36.5**):

If to Contractor:
25501 West Valley Parkway, Ste. 300
Olathe, KS 66061
Email: scotts@egov.com and legal@egov.com
Attention: Scott Somerhalder and Legal Department
Title: Vice-President of Operations

If to the State:
DTMB-Procurement, Constitution Hall
525 W. Allegan St.
1st Floor NE
PO Box 30026
Lansing, MI 48909-7526
Email: natarajanm@michigan.gov
Attention: Malathi Natarajan
Title: Category Specialist

AND

Steve Wensko, State Program Manager
wenskos@michigan.gov

Notices sent in accordance with this **Section 36.5** will be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail (with confirmation of transmission), if sent during normal business hours of the recipient, and on the next Business Day, if sent after normal business hours of the recipient; or (d) on the fifth (5th) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

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

36.7 Assignment. Contractor may not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Contract, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the State's prior written consent. The State has the right to terminate this Contract in its entirety or any Services or Statements of Work hereunder, pursuant to **Section 26.1**, if Contractor delegates or otherwise transfers any of its obligations or performance hereunder, whether voluntarily, involuntarily, by operation of law or otherwise, and no such delegation or other transfer will relieve Contractor of

any of such obligations or performance. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Contractor (regardless of whether Contractor is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Contract for which the State's prior written consent is required. Any purported assignment, delegation, or transfer in violation of this **Section 36.7** is void.

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

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

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

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

36.12   Equitable Relief. Each party to this Contract acknowledges and agrees that (a) a breach or threatened breach by such party of any of its obligations under this Contract may give rise to irreparable harm to the other party for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by such party of any such obligations, the other party hereto is, in addition to any and all other rights and remedies that may

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be available to such party at law, at equity or otherwise in respect of such breach, entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy. Each party to this Contract agrees that such party will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this **Section 36.12**.

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

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

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

Schedule A	Initial SOW, which includes Exhibits 1, and any subsequent Engagement SOWs and their exhibits
Schedule B	Rate Card
Schedule C	Maintenance and Support (if State hosted). This schedule applies if solution is State hosted, unless an Engagement SOW expressly incorporates and appends an amended and fully restated Schedule C applicable to that project.
Schedule D	Service Level Agreement (if externally hosted). This schedule applies if solution is externally hosted, unless an Engagement SOW expressly incorporates and appends an amended and fully restated Schedule D applicable to that project.
Schedule E	Security Requirements (if externally hosted). This schedule applies if solution is externally hosted, unless an Engagement SOW expressly incorporates and appends an amended and fully restated Schedule E applicable to that project.

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

attached) is deemed to have the same legal effect as delivery of an original signed copy of this Contract.

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

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

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

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

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

36.20   Entire Agreement. This Contract, together with all Schedules and Exhibits constitutes the sole and entire agreement of the parties to this Contract with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Contract, the Schedules, and Exhibits, the following order of precedence governs: (a) first, this Contract, excluding its Exhibits and Schedules; and (b) second the Exhibits and Schedules to this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE SERVICES, OR DOCUMENTATION HEREUNDER WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE OR ANY AUTHORIZED USER FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT

AND ARE DEEMED REJECTED BY THE STATE AND THE AUTHORIZED USER, EVEN IF ACCESS TO OR USE OF SUCH SERVICE OR DOCUMENTATION REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS. THE ABOVE NOTWITHSTANDING, END USERS USE OF THE SERVICES PROVIDED THROUGH AN ENGAGEMENT SOW WILL BE SUBJECT TO THE APPLICABLE TERMS OF USE AND PRIVACY POLICY DISPLAYED ON THE WEBSITES.

State of Michigan

E-Government and Transaction-Funded Services:

Schedule A – Initial Statement of Work

1. **Definitions**. All capitalized terms in this **Schedule A – Initial Statement of Work** and any Engagement Statement of Work ("Engagement SOW") issued under this Contract have the meanings set forth in **Section 1** of the Contract terms.

2. **Background**. With advances in technology, people now expect most government services to be available online. This Contract provides an option for State agencies to purchase e-government and transaction-funded applications that have either been developed for use by other states or entities, or that Contractor custom develops for the State.

3. All goods and services commissioned under this Contract, including Services and Deliverables, must be provided in accordance with this **Schedule A – Initial Statement of Work**, the applicable executed Engagement SOW, and the Contract terms. If the purchase or project involves the use of funds obtained from the federal government, the State's then-current "**Federal Provisions Addendum**" applies.

4. **Process**.

4.1. To initiate a purchase or project under this Contract, the ordering State agency ("**OSA**"), with the assistance and approval of the State Project Manager and State Program Manager, must complete a Work Order and submit it by email to Contractor. The State Program Manager is listed on the "Notice of Contract" above, or as the State otherwise designates in writing.

4.2. The Work Order template is attached as **Exhibit 1** to this **Schedule A – Initial Statement of Work**. The Work Order template may be modified by the State Program Manager to improve project management and outcomes as this program develops.

4.3. After reviewing the Work Order, Contractor must prepare and deliver by email a proposed Engagement SOW to the State Project Manager, State Program Manager, and OSA Business Owner.

4.4. Unless otherwise permitted in writing by the State Project Manager, State Program Manager, and OSA Business Owner, Contractor's proposed Engagement SOW must include all information required under the Contract terms. If information otherwise required in the Engagement SOW is not applicable based on the Work Order submitted, Contractor must expressly state so in the proposed Engagement SOW; otherwise, the information or requirements within the submitted Work Order may be deemed included by the State. Notwithstanding the foregoing, Contractor must identify and describe in detail proposed Transaction Fees, Fees, and calculation methods in **Exhibit 1** of the proposed Engagement SOW. For example: firm, fixed price; deliverables or milestone-based; lump sum; hourly (see **Schedule B** to the Contract); monthly rate; transaction fees; or a combination of the preceding. Unless otherwise expressly provided in an Engagement SOW, the State may hold-back an amount equal to 10 percent (10%) of all Fees invoiced by Contractor for Service Software, Services, and Deliverables. The State must release Fees held-back after final Acceptance.

4.5. If Contractor's proposed Engagement SOW does not meet the requirements of the State Project Manager, State Program Manager, OSA, this **Schedule A – Initial Statement of Work**, or the Contract terms, the parties will negotiate to modify the Contractor's proposed Engagement SOW in effort to reach an agreed upon document. Either party may terminate negotiations if the parties fail to agree on a final Engagement SOW.

4.6. If the parties reach an agreement on a final Engagement SOW, and the State opts to move forward, the State will issue a Purchase Order. The State's Purchase Order must electronically append the final, executed Engagement SOW and reference the DTMB-issued Contract number. "BOILERPLATE" TERMS AND CONDITIONS IN ALL-CAPS CONTAINED WITHIN THE BODY OF A PURCHASE ORDER ISSUED BY THE STATE DO NOT APPLY. SAID TERMS ARE AUTOMATICALLY GENERATED BY THE STATE'S IT SYSTEM WHEN ISSUING A PURCHASE ORDER AND ARE INAPPLICABLE HERE. THE SOFTWARE CONTRACT TERMS APPLY.

4.7. For ease of reference, the table below summarizes the documents forming this Contract:

Document	Title	Instructions
Contract Terms	Contract Terms	Applies to all services provided by Contractor and to all Engagement SOWs.
Schedule A	Initial SOW (this document)	Applies to all Engagement SOWs.
Exhibit 1 to Schedule A	Template Work Order	Using this template, the State Project Manager, State Program Manager, and OSA submit a Work Order to Contractor to initiate project consideration.
Schedule A-1, Schedule A-2, etc.	Engagement SOW	An Engagement SOW is proposed by Contractor in response to a Work Order submitted by the State. If the parties reach an agreement on an Engagement SOW, the document must be numbered consecutively, is deemed governed by the Contract terms, signed by the OSA, State Project Manager, State Program Manager, and Contractor, and appended to a Purchase Order issued by State. Change Notices are treated as an Amendment to the applicable Engagement SOW, e.g., "1st Amendment to Schedule A-2."
Exhibit 1 to Schedule A-1, A-2, etc.	Pricing	Pricing methodology for each Engagement SOW, e.g., transaction-funded, fixed fee, time and materials.
Exhibit 2 to Schedule A-1, A-2, etc.	Third-Party Materials and Open Source Components	Contractor's Disclosure of Third-Party Materials and Open Source Components.
Exhibit 3 to Schedule A-1, A-2, etc.	Licensing Agreement	Must be included with all Engagement SOWs.
Exhibit 4 to Schedule A-1, A-2, etc.	Disaster Recovery and Business Continuity Plans	Include this information as an exhibit if a system is externally hosted. Do not publish online for security reasons.
Schedule B	Rate Card	Contains hourly labor rates.
Schedule C	Maintenance and Support	This schedule applies if solution is State hosted, unless an Engagement SOW expressly incorporates and appends an amended and fully restated Schedule C applicable to that project.
Schedule D	Service Level Agreement	This schedule applies if solution is externally hosted, unless an Engagement SOW expressly incorporates and appends an amended and fully restated Schedule D applicable to that project.
Schedule E	Security Requirements	This schedule applies if solution is externally hosted, unless an Engagement SOW expressly incorporates and appends an amended and fully restated Schedule E applicable to that project.

5. **Scope**. Purchases and projects commissioned under this Contract may include the following scope.

5.1. Project management
- a. Project planning
- b. Project tracking
- c. Reporting

5.2. Business requirements
- a. Facilitated sessions
- b. Validation and verification

5.3. Required hardware

5.4. Software
- a. Payment processing services
- b. Security services
- c. Content management services
- d. Website design

5.5. Software as a Service (SaaS)

5.6. Custom-developed digital services and applications

5.7. Customization of existing Contractor applications

5.8. Implementation services
- a. Data conversion and migration
- b. Configuration and integration services
- c. Testing
- d. Marketing
- e. Hosting

5.9. Training

5.10. Documentation

5.11. Operation services

5.12. Maintenance and support
- a. Help desk
- b. Onsite technical support

5.13. Application upgrades, enhancements, and modifications

5.14. Knowledge transfer and transition services

5.15. Consulting services

6. **State's IT Policies and Environment**. Contractor must review all information and links in this **Section 6** and abide by all State policies, procedures, and standards applicable to a particular project or purchase in connection with an Engagement SOW. Broken links within this Initial Statement of Work, any Engagement SOW, any Change Notice, and the Contract terms do not relieve the Contractor from abiding by applicable policies, procedures, and standards. Instead, Contractor must notify the State Program Manager in writing if any links are broken so that the documents may be sent to Contractor.

6.1. **Additional OSA Requirements**. The OSA Business Owner, State Project Manager, or State Program Manager must provide Contractor copies of any additional OSA policies, security requirements, accessibility needs, and look-and-feel standards at the time the Work Order is submitted to Contractor or during negotiations of an Engagement SOW.

6.2. **Standard Environment**. All Services and Deliverables provided by the Contractor to run in the State's Operating Environment must be compatible with DTMB's standard IT and security environment at no additional cost to the State. Contractor may request in writing an exception to the State's standard IT or security environment, providing justification for the requested exception and all costs associated with the exception. If the requested exception is approved by the State, the State's Program Manager will provide written notice of acceptance to Contractor. The State must approve any exceptions to the State's standard IT environment in writing before Contractor may proceed with work based on that environment.

6.3. **Security Environment**. The State's security environment includes:

a. Federated identity management (MILogin). Information on MiLogin is here: https://milogintp.michigan.gov/eai/tplogin/authenticate?URL=/
b. Code security: IBM Security AppScan Enterprise
c. Infrastructure security: IPS, DLP, and content filtering
d. Vulnerability scanning: Qualys
e. Log monitoring: IBM QRadar
f. Web encryption: Transport Layer Security (TLS) and Secured Socket Layers (SSL)
g. Multi-factor authentication: RSA SecureID

6.4. **End-User Operating Environment**. Unless otherwise expressly provided in an Engagement SOW, all Contractor-provided Software must run under commonly used web browsers.

6.5. **Mobile Responsiveness**. All software provided by Contractor must be mobile-responsive unless otherwise expressly stated in an Engagement SOW.

6.6. **Look and Feel Standards**. Web applications, sites, and portals provided by the Contractor must adhere to the State's look and feel standards: www.michigan.gov/somlookandfeelstandards.

6.7. **SUITE**. As required under the Contract terms, Contractor must comply with the standards and methodologies set forth in the State Unified Information Technology Environment (SUITE) framework (located here: http://www.michigan.gov/suite). However, the parties may agree in an Engagement SOW that Contractor may use alternative documentation. Prior to such an agreement being effective, Contractor must review the SUITE link and demonstrate to the State's satisfaction how each PMM/SEM requirement will be met by using Contractor's own documents. SUITE is based on industry best practices, including those identified in the Project Management Institute's PMBoK and the Capability Maturity Model Integration for Development. It was designed and implemented to standardize methodologies, processes, procedures, training, and tools for project management and systems development lifecycle management. While applying the SUITE framework is required, SUITE was not designed to add layers of complexity to project execution. SUITE's companion templates are used to document project progress or deliverables. Contractor may have in place its own set of templates for similar use. Because SUITE can be tailored to fit specific projects, project teams and the State Project Manager may decide to use the Contractor's templates, as long as they demonstrate fulfillment of the SUITE methodologies.

6.8. **Enterprise GRC Platform**. Upon request, Contractor must assist the State in entering information about the solution, including the environment and software provided by or purchased under this Contract, into the State's governance, risk, and compliance platform (LockPath Keylight).

7. **Work Location and Hours**. Unless otherwise expressly provided in an Engagement SOW, all goods will be provided, and services performed, completed, and managed in Lansing, Michigan. Normal State working hours are 8:00 a.m. to 5:00 p.m. EST, Monday through Friday, with services performed as necessary before or after those hours to meet project deadlines. No overtime will be authorized or paid by the State. The State is not obligated to provide State management of Contractor work outside of normal State working hours. The State reserves the right to modify the work hours in the best interest of the project. Contractor must observe the same standard holidays as State employees. The State will not compensate Contractor for holiday pay.

8. **Performance Review Meetings**. The State may schedule meetings to review the Contractor's performance under the Contract or an Engagement SOW. Meetings will be held in Lansing, Michigan or by conference call, or as otherwise agreed by the parties.

9. **Reports**. Contractor must provide the State reports as required by the applicable Engagement SOW and Contract terms, or upon request.

10. **Issue Log**. An issue is an identified problem, circumstance, or event that if not addressed may affect schedule, scope, quality, or budget. Contractor must maintain a log to capture issues relating to the provision of Software and Deliverables under each Engagement SOW. The issue log must be emailed to the State Project Manager and OSA Business Owner on an agreed upon schedule. The issue log must be updated routinely and contain the following minimum elements: issue number; description of issue; issue identification date; responsibility for resolving issue; priority for issue resolution (to be agreed upon by the State and Contractor); resources assigned responsibility for resolution; resolution date; and resolution description.

EXHIBIT 1 TO SCHEDULE A – INITIAL STATEMENT OF WORK

Question or Information Sought

This Work Order is submitted under Schedule A – Initial Statement of Work of the above-referenced Contract with Michigan Interactive, LLC. Capitalized terms have the meaning ascribed to them under Schedule A – Initial Statement of Work and the Contract, unless otherwise set forth here. Work Orders may not address more than one proposed project at a time.

Line	Question or Information Sought	Description
1	Ordering State Agency ("OSA")	Enter State department or agency
2	OSA Business Owner	Enter name, title, and contact information
3	State Contract Administrator	Enter name, title, and contact information
4	State Project Manager	Enter name, title, and contact information
5	Project name	
6	Project background	Include information about OSA's legal authority to engage in project. Consider whether law applicable to OSA restricts ability to use transaction-funded model.
7	Project objective	
8	Type of State Data	E.g., FERPA, IRS, taxpayer, etc.
9	Classification of State Data at issue	Use categories provided under the enterprise data classification procedure
10	Security requirements for State Data at issue	
11	Operating Environment	
12	Will Contractor need to integrate the solution with existing State systems?	
13	Identify State Data retention requirements	Provide Contractor with copy of applicable retention and disposal schedule
14	Preferred software development methodology	If known or applicable, enter preference, e.g., agile or waterfall
15	Documentation required	
16	Anticipated Authorized Users	Explain who the State expects will use the Software, Services, and Deliverables provided by Contractor
17	Estimated number of Authorized Users	Estimate the number of Authorized Users
18	Does the Federal Provisions Addendum apply?	

19	Are there any OSA-specific policies, standards, or procedures that apply?	Enter yes or no. If yes, enter a description and relevant documentation.
20	Must Contractor sign a non-disclosure agreement to gain access to information necessary to submit a proposed Engagement SOW?	Enter yes or no. If yes, include a proposed NDA.
21	Date by which project must be fully implemented	
22	Work Site	Enter physical location Contractor must provide or deliver Services and Deliverables.
23	OSA Business Requirements Specifications	
24	OSA Technical Specifications	
25	State hosted, Contractor-hosted, or third-party hosted?	
26	Deliverables	
27	High-level Project Plan	
28	How funded?	Will this be paid for by the OSA, or through Transaction Fees.
29	Source Code Escrow required?	
30	Accessibility requirements?	
31	Liquidated damages required?	Enter yes or no. If yes, describe milestones to which LDs should be tied.
32	Customer support requirements?	
33	Training requirements?	
34	Kick-off meeting required?	
35	Additional terms	

Rate Card

Fees for all Software, Services, and Deliverables provided by Contractor will be set forth in the individual Engagement SOW. If such Services are provided on a time-and-materials basis, the established Rate Card will apply. Such Rate Card is firm and fixed, and will not be increased during the Term of this Contract.

Position	Hourly rate ($)
General manager	320
Director of marketing	240
Director of development	280
Senior developer	200
Project manager	200
System administrator	200
Creative designer	150
Junior developer	160
Business analyst	110
Training	150

SCHEDULE C
Maintenance and Support for State Hosted Software

(This schedule applies when solution is hosted by the State)

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 **Section 1** or this Schedule have the respective meanings given to them in the Contract.

"**Contact List**" means a current list of Contractor contacts and telephone numbers set forth in an Exhibit to the Engagement SOW 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 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 3.4**.

"**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 severity levels 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 3.4**.

"**State Cause**" means any of the following causes of an Error when confirmed through root cause analysis: (a) a State server hardware problem; (b) a desktop/laptop hardware problem; (c)

a State network communication problem; or (d) an Error introduced by State, a State contractor (other than Contractor), or a State System.

"**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 Fee**" means the fee for maintence and support services set forth in the Engagement SOW, which may be represented as a percentage of revenue for Transaction Fee based engagements.

"**Support Hours**" means twenty-four (24) hours a day, seven days a week.

"**Support Period**" means the date the Software has entered full production mode and ending on the date the Engagement SOW expires or is terminated.

"**Support Request**" has the meaning set forth in **Section 3.2**.

2. Maintenance.

   2.1   Maintenance Releases. Provided that the State is current on its Support Services Fees, during the Support Period, Contractor must provide the State, at no additional charge, with all Maintenance Releases for the Software.

   2.2   New Versions. Provided that the State is current on its Support Services Fees, during the Support Period, Contractor must provide the State, at no additional charge, with all New Versions of the Software

   2.3   Installation. Installation will be in accordance with Section 15.3 of the Contract.

3. Support Services. The State will provide First Line Support prior to making a Service Request for Second Line Support. Contractor must 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 Engagement SOW, including the Service Levels and other Contractor obligations set forth in this **Section 3**. Contractor will provide support services (collectively, "**Support Services**") in accordance with the provisions of this **Section** 3; *provided, however*, notwithstanding anything to the contrary, Contractor will remediate security vulnerabilities in accordance with the CVSS risk ranking metric. Further, the Response and Resolution times set forth in **Section 3.4** will be extended if the Service Error occurs during scheduled downtime for routine or approved emergency maintenance.

   3.1   Support Service Responsibilities. Contractor must:

      (a)   provide unlimited telephone support during all Support Hours;

(b)   respond to and Resolve all Support Requests in accordance with the Service Levels set forth in **Section 3.4**;

(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.

3.2   <u>Support Requests</u>. 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 must 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 must notify Contractor of each Support Request by email or telephone. The State must include in each Support Request a description of the reported Error and the time the State first observed the Error.

3.3   <u>State Obligations</u>. The State must 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.

3.4   <u>Service Level Table</u>. 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 must 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:

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Support Request Classification	Definition	Service Level Metric (Required Response Time)	Service Level Metric (Required Resolution Time)
Critical Service Error	(a) Issue affecting entire Software system or single critical production function; (b) Software down or operating in materially degraded state; (c) Data integrity at risk; (d) Material financial impact; (e) Widespread access interruptions; or (f) Classified by the mutual agreement of the Parties as a Critical Service Error	Contractor must acknowledge receipt of a Support Request within one hour.	Contractor must Resolve the Support Request as soon as practicable and no later than two (2) hours after Contractor's receipt of the Support Request within Business Hours, or within four (4) hours if requested outside Business Hours. If the Contractor Resolves the Support Request by way of a work-around accepted in writing by the State, the severity level assessment will be reduced to a High Service Error.
High Service Error	(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;	Contractor must acknowledge receipt of a Support Request or, where applicable, the State's written acceptance of a Critical Service Error work-around, within two (2) hours.	Contractor must Resolve the Support Request as soon as practicable and no later than four (4) hours after Contractor's receipt of the Support Request within Business Hours, or

	(b) Primary component failure that materially impairs Software's performance; (c) Data entry or access is materially impaired on a limited basis; (d) Performance issues of severe nature impacting critical processes; or (e) Repeated, uncorrected, Medium Service Errors.		within eight (8) hours if requested outside Business Hours or, where applicable, the State's written acceptance of a Critical Service Error work-around.
Medium Service Error	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 must acknowledge receipt of the Support Request within twenty four (24) hours.	Contractor must Resolve the Support Request as soon as practicable and no later than ten (10) Business Days after Contractor's receipt of the Support Request.

Low Service Error	Request for assistance, information, or services that are routine in nature.	Contractor must acknowledge receipt of the Support Request within forty eight (48) hours.	Contractor must Resolve the Support Request as soon as practicable and no later than twenty (20) Business Days after Contractor's receipt of the Support Request.

3.5 Escalation to Parties' Project Managers. 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 parties' respective Project Managers and then to their respective Contract Administrators.

3.6 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.

3.7 Contractor Updates. Contractor must 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.

4. Service Credits.

4.1 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 (For Failure to Respond to any Support Request Within the Corresponding Response Time)	Service Level Credits (For Failure to Resolve any Support Request Within the

		Corresponding Required Resolution Time)
Critical Service Error	An amount equal to 3% of the then current monthly Support Fee for each full hour by which Contractor's response exceeds the required Response time.	An amount equal to 3% of the then current monthly Support Fee for each full hour by which Contractor's Resolution of the Support Request exceeds the required Resolution time.
High Service Error	An amount equal to 1% of the then current monthly Support Fee for each full hour, by which Contractor's response exceeds the required Response time.	An amount equal to 1% of the then current monthly Support Fee for each full hour, by which Contractor's Resolution of the Support Request exceeds the required Resolution time.
Medium and Low Service Errors	N/A	An amount equal to 2% of the then current monthly Support Fee for each full Business Day, and a prorated 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.

4.2   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.

4.3   Issuance of Service Credits. Contractor must, 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 must 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.

4.4   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 Engagement SOW. 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.

5.   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 email for communications on any matter referred to herein.

SCHEDULE D
Service Level Agreement

(This schedule applies when solution is externally hosted.)

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

"**Actual Uptime**" means the total minutes in the Service Period that the Hosted Services are available and operable for access and use by the State and its Authorized Users over the Internet in material conformity with the Engagement SOW.

"**Availability**" has the meaning set forth in **Section 4(a)**.

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

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

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

"**Corrective Action Plan**" has the meaning set forth in **Section 6**.

"**Critical Service Error**" has the meaning set forth in **Section 5.4(a)**.

"**Emergency Maintenance**" has the meaning set forth in **Section 4.2(f)**.

"**Engagement SOW**" has the meaning set forth in the Contract.

"**Exceptions**" has the meaning set forth in **Section 4.2**.

"**High Service Error**" has the meaning set forth in **Section 5.4(a)**.

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

"**Low Service Error**" has the meaning set forth in **Section 5.4(a)**.

"**Medium Service Error**" has the meaning set forth in **Section 5.4(a)**.

"**Resolve**" has the meaning set forth in **Section 5.4(b)**.

"**Scheduled Downtime**" has the meaning set forth in **Section 4.3**.

"**Scheduled Uptime**" means the total minutes in the Service Period.

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"**Service Availability Credits**" has the meaning set forth in **Section 4.6**.

"**Service Error**" means any failure of any Hosted Service to be Available or otherwise perform in accordance with this Schedule.

"**Service Level Credits**" has the meaning set forth in **Section 5.5**.

"**Service Level Failure**" means a failure to perform the Software Support Services fully in compliance with the Support Service Level Requirements.

"**Service Period**" has the meaning set forth in **Section 4(a)**.

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

"**Software Support Services**" has the meaning set forth in **Section 5**.

"**State Cause**" means any of the following causes of an Error or Service Error when confirmed through root cause analysis: (a) a State server hardware problem; (b) a desktop/laptop hardware problem; (c) a State network communication problem; or (d) an Error introduced by State, a State contractor (other than Contractor), or a State System.

"**State Service Manager**" has the meaning set forth in **Section 3.2**.

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

"**Support Fee**" means the fee for maintence and support services set forth in the Engagement SOW, which may be represented as a percentage of revenue for Transaction Fee based engagements.

"**Support Period**" means the period of time beginning 120 days after the date the Software has entered full production mode and ending on the date the Engagement SOW expires or is terminated.

"**Support Request**" has the meaning set forth in **Section 5.4(a)**.

"**Support Service Level Requirements**" has the meaning set forth in **Section 5.4**.

"**Term**" means the term set forth in the Engagement SOW.

2. **Services.**

2.1   Services. Throughout the Term, Contractor will, in accordance with all terms and conditions set forth in the Contract, the Engagement SOW, and this Schedule, provide to the State and its Authorized Users the following services during the Support Period:

(a)   the hosting, management and operation of the Software and other services for remote electronic access and use by the State and its Authorized Users (in the aggregate, "**Hosted Services**");

(b)   the Software Support Services set forth in **Section 5** of this Schedule;

3.   Personnel.

3.1   Contractor Personnel for the Hosted Services. Contractor will appoint a Contractor employee to serve as a primary contact with respect to the Services who will have the authority to act on behalf of Contractor in matters pertaining to the receipt and processing of Support Requests and the Software Support Services (the "**Contractor Service Manager**"). The Contractor Service Manager will be considered Key Personnel under the Contract.

3.2   State Service Manager for the Hosted Services. The State will appoint and, in its reasonable discretion, replace, a State employee to serve as the primary contact with respect to the Services who will have the authority to act on behalf of the State in matters pertaining to the Software Support Services, including the submission and processing of Support Requests (the "**State Service Manager**").

4.   Service Availability and Service Availability Credits.

(a)   Availability Requirement. Contractor will make the Hosted Services Available, as measured over the course of each calendar month during the Term and any additional periods during which Contractor does or is required to perform any Hosted Services (each such calendar month, a "**Service Period**"), at least 99.9% of the time, excluding only the time the Hosted Services are not Available to the extent a result of one or more Exceptions (the "**Availability Requirement**"). "**Available**" means the Hosted Services are available and operable for access and use by the State and its Authorized Users over the Internet in material conformity with the Engagement SOW. "**Availability**" has a correlative meaning. The Hosted Services are not considered Available in the event of a material performance degradation or inoperability of the Hosted Services, in whole or in part. The Availability Requirement will be calculated for the Service Period as follows: (Actual Uptime) ÷ (Scheduled Uptime – Total Minutes in Service Period Hosted Services are not Available Due to an Exception) x 100 = Availability.

4.2   Exceptions. No period of Hosted Service degradation or inoperability will be included in calculating Availability to the extent that such downtime or degradation is due to any of the following ("**Exceptions**"):

(a)   failures of the State's or its Authorized Users' internet connectivity;

(b)   internet or other network traffic problems other than problems arising in or from networks required to be provided or controlled by Contractor;

(c)   a root-cause analysis determines the downtime or degradation was due to interfaces provided and supported by the State or other State Cause;

(d)   due to a Force Majeure Event;

(e)   Scheduled Downtime as set forth in **Section 4.3**;

(f)   State approved Emergency Maintenance, provided that Contractor notifies and obtains verbal approval from the State prior to performing such Emergency Maintenance, the Emergency Maintenance does not last longer than the timeframe agreed to by the State, and after the Emergency Maintenance has been performed the Contractor provides to the State in writing the reasons for the maintenance, the length of the outage, and confirmation approval from the State was received. "**Emergency Maintenance**" is an unscheduled service outage initiated by Contractor to prevent or mitigate circumstances that Contractor deems critical or serious.

4.3   Scheduled Downtime. Contractor must notify the State at least twenty-four (24) hours in advance of all scheduled outages of the Hosted Services in whole or in part ("**Scheduled Downtime**"). All such scheduled outages will: (a) last no longer than five (5) hours; (b) be scheduled between the hours of 12:00 a.m. and 5:00 a.m., Eastern Time; and (c) occur no more frequently than once per week; provided that Contractor may request the State to approve extensions of Scheduled Downtime above five (5) hours, and such approval by the State may not be unreasonably withheld or delayed.

4.4   Software Response Time. Software response time, defined as the interval from the time the end user sends a transaction to the time a visual confirmation of transaction completion is received, must be less than two (2) seconds for 98% of all transactions ("**Software Response Time**"). Notwithstanding the foregoing, Software Response Time will not include the State's or a Third-Party's processing time for the transaction (e.g. CEPAS). The Statement of Work will set forth the acceptable testing plan, tracking plan, and reporting process for measuring and tracking Software Response Time. Unacceptable response times will be considered to make the Software unavailable and will count against the Availability Requirement.

4.5   Service Availability Reports. Within thirty (30) days after the end of each Service Period, Contractor will provide to the State a report describing the Availability and other performance of the Hosted Services during that calendar month as compared to the Availability Requirement. The report must be in electronic or such other form as the State may approve in writing and must include, at a minimum: (a) the actual performance of the Hosted Services relative to the Availability Requirement; and (b) if Hosted Service performance has failed in any respect to meet or exceed the Availability Requirement during the reporting period, a description in sufficient detail to inform the State of the cause of such failure and the corrective actions the Contractor has taken and will take to ensure that the Availability Requirement are fully met.

4.6   Remedies for Service Availability Failures.

(a)   If the actual Availability of the Hosted Services is less than the Availability Requirement for any Service Period, such failure will constitute a Service Error for which Contractor will issue to the State the following credits on the Support Fees payable for Hosted Services provided during the Service Period

("**Service Availability Credits**"):

Availability	Credit of Support Fees
≥99.9%	None
<99.9% but ≥99.0%	15%
<99.0% but ≥95.0%	25%
<95.0%	50%

(b)   Any Service Availability Credits due under this **Section 4.5** will be applied in accordance with payment terms of the Contract. The State may not assess both Availability Credits and Service Level Credits for the same incident.

(c)   If the actual Availability of the Hosted Services is less than the Availability Requirement in any two (2) of four (4) consecutive Service Periods, then, in addition to all other remedies available to the State, the State may terminate the Engagement SOW on written notice to Contractor with no liability, obligation or penalty to the State by reason of such termination.

5.   Support and Maintenance Services. Contractor will provide Hosted Service maintenance and support services (collectively, "**Software Support Services**") in accordance with the provisions of this **Section 5**; *provided, however*, notwithstanding anything to the contrary, Contractor will remediate security vulnerabilities in accordance with the CVSS risk ranking metric. Further, the Response and Resolution times set forth in **Section 5.4(b)** will be extended if the Service Error occurs during scheduled downtime for routine or approved emergency maintenance. The Software Support Services are included in the Services, and Contractor may not assess any additional fees, costs or charges for such Software Support Services.

5.1   Support Service Responsibilities. Contractor will:

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

(b)   for Critical Service Errors provide unlimited telephone support 24 hours a day, seven days a week;

(c)   any Service Error other than Critical Service Error provide unlimited telephone support 6:00 am until 7:00 pm, Eastern Time (ET);

(d)   provide unlimited online support 24 hours a day, seven days a week;

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

(f)   respond to and Resolve Support Requests as specified in this **Section 5**.

5.2   <u>Service Monitoring and Management</u>. Contractor will continuously monitor and manage the Hosted Services to optimize Availability that meets or exceeds the Availability Requirement. Such monitoring and management includes:

(a)   proactively monitoring on a twenty-four (24) hour by seven (7) day basis all Hosted Service functions, servers, firewall and other components of Hosted Service security;

(b)   if such monitoring identifies, or Contractor otherwise becomes aware of, any circumstance that is reasonably likely to threaten the Availability of the Hosted Service, taking all necessary and reasonable remedial measures to promptly eliminate such threat and ensure full Availability; and

(c)   if Contractor receives knowledge that the Hosted Service or any Hosted Service function or component is not Available (including by written notice from the State pursuant to the procedures set forth herein):

(i)   confirming (or disconfirming) the outage by a direct check of the associated facility or facilities;

(ii)   if Contractor's facility check in accordance with clause (i) above confirms a Hosted Service outage in whole or in part: (A) notifying the State in writing pursuant to the procedures set forth herein that an outage has occurred, providing such details as may be available, including a Contractor trouble ticket number, if appropriate, and time of outage; and (B) working all problems causing and caused by the outage until they are Resolved as Critical Service Errors in accordance with the Support Request Classification set forth in **Section 5.4**, or, if determined to be an internet provider problem, open a trouble ticket with the internet provider; and

(iii)   notifying the State that Contractor has fully corrected the outage and any related problems, along with any pertinent findings or action taken to close the trouble ticket.

5.3   <u>Service Maintenance</u>. Contractor will continuously maintain the Hosted Services to optimize Availability that meets or exceeds the Availability Requirement. Such maintenance services include providing to the State and its Authorized Users:

(a)   all updates, bug fixes, enhancements, Maintenance Releases, New Versions and other improvements to the Hosted Services, including the Software, provided that Contractor notifies and consults with the State prior to modifying or upgrading Hosted Services, including Maintenance Releases and New Versions of Software; and

(b)   all such services and repairs as are required to maintain the Hosted Services or are ancillary, necessary or otherwise related to the State's or its Authorized Users' access to or use of the Hosted Services, so that the Hosted Services operate properly in accordance with the Engagement SOW and this Schedule.

5.4   Support Service Level Requirements. Contractor will correct all Service Errors and respond to and Resolve all Support Requests in accordance with the required times and other terms and conditions set forth in this **Section 5.4** ("**Support Service Level Requirements**"), and the Engagement SOW.

(a)   Support Requests. The State will classify its requests for Service Error corrections in accordance with the descriptions set forth in the chart below (each a "**Support Request**"). The State Service Manager will notify Contractor of Support Requests by email, telephone or such other means as the parties may hereafter agree to in writing.

Support Request Classification	Description: **Any Service Error Comprising or Causing any of the Following Events or Effects**
Critical Service Error	(a) Issue affecting entire system or single critical production function; (b) System down or operating in materially degraded state; (c) Data integrity at risk; (d) Material financial impact; (e) Widespread access interruptions; or (f) Classified by the mutual agreement of the Parties as a Critical Service Error
High Service Error	(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; (b) Primary component failure that materially impairs system's performance;

	(c) Data entry or access is materially impaired on a limited basis; or (d) performance issues of severe nature impacting critical processes.
Medium Service Error	An isolated or minor Error in the system that meets any of the following requirements: (a) does not significantly affect system functionality; (b) can or does impair or disable only certain non-essential system functions; or (c) does not materially affect the State's use of the system.
Low Service Error	Request for assistance, information, or services that are routine in nature.

(b) <u>Response and Resolution Time Service Levels</u>. Response and Resolution times will be measured from the time Contractor receives a Support Request until the respective times Contractor has (i) responded to, in the case of response time and (ii) Resolved such Support Request, in the case of Resolution time. "**Resolve**" (including "**Resolved**", "**Resolution**" and correlative capitalized terms) means that, as to any Service Error, Contractor has provided the State the corresponding Service Error correction and the State has confirmed such correction and its acceptance thereof. Contractor will respond to and Resolve all Service Errors within the following times based on the severity of the Service Error:

Support Request Classification	Service Level Metric (Required Response Time)	Service Level Metric (Required Resolution Time)	Service Level Credits (For Failure to Respond to any Support Request Within the Corresponding Response Time)	Service Level Credits (For Failure to Resolve any Support Request Within the Corresponding Required Resolution Time)

Critical Service Error	Contractor must acknowledge receipt of a Support Request within one (1) hour.	Contractor must Resolve the Support Request as soon as practicable and no later than two (2) hours after Contractor's receipt of the Support Request if during Business Hours, or four (4) hours if the request was received outside Business Hours. If the Contractor Resolves the Support Request by way of a work-around accepted in writing by the State, the severity level assessment will be reduced to a High Service Error.	An amount equal to 5% of the then current monthly Support Fee for each full hour by which Contractor's response exceeds the required Response time.	An amount equal to 3% of the then current monthly Support Fee for each full hour by which Contractor's Resolution of the Support Request exceeds the required Resolution time.
High Service Error	Contractor must acknowledge receipt of a Support Request or, where applicable, the State's written acceptance of a Critical Service Error work-	Contractor must Resolve the Support Request as soon as practicable and no later than four (4) hours after Contractor's receipt of the Support Request	An amount equal to 1% of the then current monthly Support Fee for each full hour, by which Contractor's response exceeds the	An amount equal to 1% of the then current monthly Support Fee for each full hour, by which Contractor's Resolution of the Support Request exceeds the

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	around, within two (2) hours.	during Business Hours or eight (8) hours if the request was received outside Business Hours or, where applicable, the State's written acceptance of a Critical Service Error work-around.	required Response time.	required Resolution time.
Medium Service Error	Contractor must acknowledge receipt of the Support Request within twenty four (24) hours.	Contractor must Resolve the Support Request as soon as practicable and no later than ten (10) Business Days after Contractor's receipt of the Support Request.	N/A	An amount equal to 2% of the then current monthly Support Fee for each full Business Day, and a prorated 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.
Low Service Error	Contractor must acknowledge receipt of the Support Request within forty eight (48) hours.	Contractor must Resolve the Support Request as soon as practicable and no later than twenty (20) Business Days after	N/A	An amount equal to 2% of the then current monthly Support Fee for each full Business Day, and a prorated share of such percentage for

		Contractor's receipt of the Support Request.		each part of a Business Day, by which Contractor's Resolution of the Support Request exceeds the required Resolution time.

(c)   Escalation. With respect to any Critical Service Error Support Request, until such Support Request is Resolved, Contractor will escalate that Support Request within sixty (60) minutes of the receipt of such Support Request by the appropriate Contractor support personnel, including, as applicable, the Contractor Service Manager and Contractor's management or engineering personnel, as appropriate.

5.5   Support Service Level Credits. Failure to achieve any of the Support Service Level Requirements for Critical and High Service Errors will constitute a Service Level Failure for which Contractor will issue to the State the corresponding service credits set forth in **Section 5.4(b)** ("**Service Level Credits**") in accordance with payment terms set forth in the Contract. The State may not assess both Availability Credits and Service Level Credits for the same incident.

6.   Corrective Action Plan. If two or more Critical Service Errors occur in any thirty (30) day period during (a) the Term or (b) any additional periods during which Contractor does or is required to perform any Hosted Services, Contractor will promptly investigate the root causes of these Service Errors and provide to the State within five (5) Business Days of its receipt of notice of the second such Support Request an analysis of such root causes and a proposed written corrective action plan for the State's review, comment and approval, which, subject to and upon the State's written approval, is a part of, and by this reference is incorporated in, the Engagement SOW as the parties' corrective action plan (the "Corrective Action Plan"). The Corrective Action Plan must include, at a minimum: (a) Contractor's commitment to the State to devote the appropriate time, skilled personnel, systems support and equipment and other resources necessary to Resolve and prevent any further occurrences of the Service Errors giving rise to such Support Requests; (b) a strategy for developing any programming, software updates, fixes, patches, etc. necessary to remedy, and prevent any further occurrences of, such Service Errors; and (c) time frames for implementing the Corrective Action Plan. There will be no additional charge for Contractor's preparation or implementation of the Corrective Action Plan in the time frames and manner set forth therein.

7.   Disaster Recovery and Backup. Throughout the Term and at all times in connection with its actual or required performance of the Services, and in addition to requirements set forth in the Statement of Work, Contractor will:

(a)   maintain and operate a backup and disaster recovery plan to achieve a Recovery Point Objective (RPO) of 24 hours, and a Recovery Time Objective (RTO) of 72 hours (the "**DR Plan**"), and implement such DR Plan in the event of any unplanned interruption of the Hosted Services. Contractor will actively test, review and update the DR Plan on at least an annual basis using industry best practices as guidance. All updates to the DR Plan are subject to the requirements of this **Section 7**; and

(b)   If Contractor fails to reinstate all material Hosted Services within the periods of time set forth in the DR Plan, the State may, in addition to any other remedies available under this Contract, in its sole discretion, immediately terminate this Contract as a non-curable default.

(c)   If requested by the State, provide the State access to the DR Plan or any test results either by WebEx or in person at Contractor's facility, and will assist the State with preparation of any State required security documents.

(This schedule applies when solution is Contractor hosted.)

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 **Section 1** have the respective meanings given to them in the Contract.

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

"FISMA" means the Federal Information Security Management Act of 2002 (44 U.S.C. ch. 35, subch. III § 3541, *et seq.*)

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

"**NIST**" means the National Institute of Standards and Technology.

"**PCI**" means the Payment Card Industry.

"**PSP**" means the State's IT Policies, Standards and Procedures located at:
http://michigan.gov/dtmb/0,4568,7-150-56355_56579_56755---,00.html

"**SSAE**" means Statement on Standards for Attestation Engagements.

2. Contractor must appoint a Contractor employee to respond to the State's inquiries regarding the security of Contractor Systems, who has sufficient knowledge of the security of Contractor Systems and the authority to act on behalf of Contractor in matters pertaining thereto ("**Contractor Security Officer**").

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

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

   3.2   maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State's Confidential Information that comply with the requirements of the State's data security policies as set forth in the Contract**,** and must, at a minimum, remain compliant with FISMA and NIST Special Publication 800.53 (most recent version) Moderate (MOD) level using minimum control parameter values as established in the applicable PSP, and have such NIST Special Publication 800.53 (most recent version) Moderate (MOD) level controls certified by a third party assessor;

   3.3   provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, transfer, commingling or processing of such information that ensure a level of security appropriate to the risks presented by the processing of the State's Confidential Information and the nature of such Confidential Information, consistent with commercially reasonable practices and standards;

3.4   take all reasonable measures to:

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

(b)   prevent (i) the State and its Authorized Users from having access to the data of other customers or such other customer's users of the Services; (ii) unauthorized access to any of the State's Confidential Information; and (iii) segment the State's Confidential Information from other customers or their users of the Services.

3.5   State Data must be encrypted in transit and at rest using currently certified encryption modules in accordance with FIPS PUB 140-2 (as amended), *Security Requirements for Cryptographic Modules* or equivalent level of protection;

3.6   the Hosted Services must support Identity Federation/Single Sign-on (SSO) capabilities using SAML or comparable mechanisms, including support for multi-factor method of authentication as required based on data classification; and

3.7   the Hosted Services must have enabled multi-factor method of authentication for privileged/administrative access.

4.   **Unauthorized Access**. Contractor may not access, and must not permit any access to, State Systems, in whole or in part, whether through Contractor's Systems or otherwise, without the State's express prior written authorization. Such authorization may be revoked by the State in writing at any time in its sole discretion. Any access to State Systems must be solely in accordance with the Contract and this Schedule, and in no case exceed the scope of the State's authorization pursuant to this **Section 4**. All State-authorized connectivity or attempted connectivity to the State must be only through the State's security gateways and firewalls and in compliance with the State's security policies set forth in the Contract as the same may be supplemented or amended by the State and provided to Contractor from time to time.

5.   **Security Audits**. During the Term, Contractor will:

5.1   maintain complete and accurate records relating to its data protection practices, IT security controls, breach notification response plan, and the security logs of any of the State's Confidential Information, including any backup, disaster recovery or other policies, practices or procedures relating to the State's Confidential Information and any other information relevant to its compliance with this Schedule;

5.2   upon the State's request, make all such records, appropriate personnel and relevant materials available during normal business hours for inspection and audit by the State or an independent data security expert that is reasonably acceptable to Contractor, provided that the State: (i) gives Contractor at least five (5) Business Days prior notice of any such audit; (ii) undertakes such audit no more than once per calendar year, except for good cause shown; and (iii) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Contractor's normal business operations and that complies with the terms and conditions of all data confidentiality, ownership, privacy, security and restricted use provisions of the Contract. The State may, but is not obligated to, perform such security audits, which must, at the State's option and request, include mutually agreed to scope for penetration and application security tests, of any and all Contractor Systems and their housing facilities and operating environments; and

5.3   if requested by the State, provide access to the SOC 2 Type 2 audit report obtained from the applicable hosting facility for the Hosted Services, either by WebEx or in person at Contractor's facility, and will assist the State with preparation of any State required security documents.

6.   **Nonexclusive Remedy**. 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 if not remediated within a timely manner, 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.

7.   **PCI Compliance**.

7.1   Contractors that process, transmit, store or affect the security of credit/debit cardholder data, must adhere to the PCI Data Security Standard. Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist the State or for other uses specifically authorized by law.

7.2   Contractor must notify the State's Contract Administrator (within 48 hours of discovery) of any breaches in security where cardholder data has been compromised. In that event, Contractor must provide full cooperation to the card associations (e.g. Visa, MasterCard, and Discover) and state acquirer representative(s), or a PCI approved third party, to conduct a thorough security review. Contractor must share, at the request of the State, the results of such third party security review. The review must validate compliance with the PCI Data Security Standard for protecting cardholder data. At the State's sole discretion, the State may perform its own security review, either by itself or through a PCI approved third party.

7.3   Contractor is responsible for all costs incurred as the result of the breach. Costs may include, but are not limited to, fines/fees for non-compliance, card reissuance, credit monitoring, breach notification, and any costs associated with a card association, PCI approved third party, or State initiated security review.

7.4   Without limiting Contractor's obligations of indemnification as further described in this Contract, Contractor must 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 breach.

7.5   Contractor must dispose of cardholder data when it is no longer needed in compliance with PCI DSS policy. Contractor must continue to treat cardholder data as confidential upon contract termination.

7.6   Contractor must provide the State's Contract Administrator with an annual Attestation of Compliance (AOC) and Report on Compliance (ROC) (if required) showing Contractor is in compliance with the PCI Data Security Standard. Contractor must notify the State's Contract Administrator of all failures to comply with the PCI Data Security Standard.