

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 **071B4300127**

CONTRACTOR	Perspecta State & Local Inc.
	5400 Legacy Drive
	Plano, TX 75024
	Ernie Sanders
	937-603-5661
	ernie.sanders@perspecta.com
	VC0001427

STATE	Program Manager	Ross Feldpausch	DNR
		517-284-6078	
		FeldpauschR@michigan.gov	
	Contract Administrator	Jennifer Bronz	DTMB
		(517) 249-0493	
		bronzj@michigan.gov	

CONTRACT SUMMARY				
RSS_II LICENSE AGREEMENT				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE	
June 1, 2014	June 1, 2020	5 - 1 Year	June 1, 2030	
PAYMENT TERMS		DELIVERY TIMEFRAME		
ALTERNATE PAYMENT OPTIONS				EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>		<input type="checkbox"/>		June 1, 2030
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$1.00	\$0.00	\$1.00		
DESCRIPTION				
Effective 5/31/2019 Please note that contractor name has been updated from Enterprise Services, LLC to Perspecta State & Local Inc. Also note that the Contractor Administrator has been updated from Kim Harris to Jennifer Bronz. Contractor point of contact has been updated from Eric Murphy to Ernie Sanders. All other terms, conditions, specifications and pricing remain the same. Per DTMB contractor and agency agreement, and DTMB Procurement Services.				

CHANGE AUTHORIZATION REQUEST

Contract No. 071B4300127

Change Authorization Request No. 2019-001

I. General

This Change Authorization Request (CAR) is subject to all terms and conditions of the Department of Technology, Management and budget on behalf of Department of Natural Resources Contract between Perspecta State & Local Inc. (Perspecta S&L), an Illinois corporation, with a principal place of business at 15052 Conference Center Drive, Chantilly, Virginia, 20151, formerly contracted as Enterprise Services LLC (ES), and the State of Michigan. Except as expressly specified herein, all terms and conditions of the Contract shall remain in full force and effect upon execution of this request. This request is not valid until it is signed by all parties, a Contract Change Notice is issued by the Office of Purchasing, Michigan Department of Technology Management and Budget (DTMB).

II. Description of Change

1. This Change Authorization Request (CAR) documents a name change from Enterprise Services LLC (ES) to Perspecta State & Local Inc. (Perspecta S&L)
2. This Change Authorization Request (CAR) changes the FEIN number to 36-4172737 for the Perspecta State & Local Inc.

II-A PROBLEM STATEMENT

1. Align all of ES's state and local work into a single entity
2. Change the FEIN number for the Perspecta S&L legal entity

II-B OBJECTIVES

1. Align all of ES's state and local work into a single entity
2. Change the FEIN number for the Perspecta S&L legal entity

II-C TASKS

1. Where Enterprise Services LLC is referenced in the contract, replace with Perspecta State & Local Inc.
2. Where ES is referenced in the contract, replace with Perspecta S&L
3. Change the FEIN number to 36-4172737 for Perspecta S&L

III. Cost

N/A

IV. Impact on Contract

\$ 0

V. Signatures

Enterprise Services LLC. ("ES")

By: _____
Janis O. Stabler

Title: Director, Contracts

Date: January 10, 2019

DTMB Contract Administrator

By: _____

Title: _____

Date: _____

DNR, Program Manager

By: _____

Title: _____

Date: _____

DTMB Purchasing Operations

By: _____

Title: _____

Date: _____



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

CONTRACT CHANGE NOTICE

Change Notice Number **1**
 to
 Contract Number **071B4300127**

CONTRACTOR	Enterprise Services, LLC
	5400 Legacy Drive
	Plano, TX 75024
	Eric Murphy
	937-603-5661
	eric.murphy@dxc.com
	*****8221

STATE	Program Manager	Ross Feldpausch	DNR
		517-284-6078	
		FeldpauschR@michigan.gov	
	Contract Administrator	Kim Harris	DTMB
		(517) 284-7016	
		harrisk16@michigan.gov	

CONTRACT SUMMARY				
RSS_II LICENSE AGREEMENT				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
June 1, 2014	June 1, 2020	5 - 1 Year	June 1, 2020	
PAYMENT TERMS		DELIVERY TIMEFRAME		
		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-Card		<input type="checkbox"/> Direct Voucher (DV)	<input type="checkbox"/> Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>	10 years	June 1, 2030
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$1.00	\$0.00	\$1.00		
DESCRIPTION				
Effective 6/16/2017, the parties amend and restate the License Agreement that was originally entered into on June 1, 2014 as attached hereto. The Agreement is restated to indicate the initial expiration date now June 1, 2030 and the five option years will be available thereafter (a potential expiration date of June 1, 2035 if all option years are exercised). All other terms, conditions, specifications and pricing remain the same. Per contractor, agency, and DTMB Procurement agreement.				

License Agreement

This License Agreement (this "**Agreement**") is entered into on June 1, 2014 (the "**Effective Date**"), amended and restated on July 18, 2017 ("**Amended Date**") by and between the State of Michigan, Department of Technology, Management and Budget on behalf of the Department of Natural Resources (collectively, the "**State**") and Enterprise Services LLC, a Delaware limited liability company, with a principal place of business at 5400 Legacy Drive, Plano, TX 75024 ("**ES**") (Together with the State, the "**parties**").

Recitals

WHEREAS, under the terms of Contract No. 071B1300157, by and between the State and ES (the "**RSS-II Contract**"), ES is currently developing a new, web-based retail sales system for the State with enhanced technology and features (the "**RSS-II System**"), which is intended to replace the State's legacy retail sales system that handles transactions for hunting, fishing and recreational vehicle licensing; and

WHEREAS, ES provides a full range of information technology services to, among others, state and local governments, and is interested in promoting, marketing, bidding and sublicensing the RSS-II System to such customers, potentially with modifications and/or enhancements not required or requested by the State for the State's RSS-II System; and

WHEREAS, the State is willing to grant ES an exclusive license to promote, market, bid and sublicense the RSS-II System and to assist ES with certain marketing efforts and to grant ES such additional licensing rights as set forth this Agreement in exchange for compensation, as set forth in this Agreement.

Whereas, this is a replacement license agreement for Contract 071B6000653, which expired upon the original execution of this license agreement, and is hereby amended as of Amended Date.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the State and ES agree as follows:

Agreement

1. **Definitions.** For purposes of this Agreement, in addition to the bold capitalized terms defined elsewhere in this Agreement, the following terms shall have the meanings given to them below.
 - 1.1 "**Agreement**" has the meaning set forth in the preamble.
 - 1.2 "**Confidential Information**" has the meaning set forth in **Section 11.1**.
 - 1.3 "**Customer**" means a state, local or other governmental entity, including governmental entities outside the United States, with whom ES has signed an agreement to provide the RSS-II System.
 - 1.4 "**Derivative Work**" means any modification, addition, upgrade, update or improvement of the RSS-II System and any other work constituting a derivative work under the United States Copyright Act, 17 U.S.C. Section 101, *et seq.*

- 1.5 “**Documentation**” means all user manuals, operating manuals, technical manuals and any other instructions, specifications, documents and materials, in any form or media, that describe the functionality, installation, testing, operation, use, maintenance, support and technical and other components, features and requirements of the RSS-II System.
- 1.6 “**Effective Date**” and “**Amended Date**” have the meanings set forth in the preamble.
- 1.7 “**Force Majeure**” has the meaning set forth in **Section 13.2**.
- 1.8 “**Future Enhancements**” means (i) any enhancements to the State’s RSS-II System, (ii) any new features developed for the State’s RSS-II System, or (iii) the integration of any other ES Customer Contract enhancements into the State’s RSS-II System.
- 1.9 “**ES**” has the meaning set forth in the preamble.
- 1.10 “**ES Customer Contract**” means an agreement executed between ES and a Customer pursuant to which ES will provide the RSS-II System or Derivative Work for such Customer.
- 1.11 “**ES Customer Contract Credit**” has the meaning set forth in **Section 3.2**.
- 1.12 “**Initial Credit**” has the meaning set forth in **Section 3.1**.
- 1.13 “**Intellectual Property Rights**” means all or any of the following, 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 in any part of the world: (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 associated goodwill; (c) copyrights and copyrightable works (including computer programs), and rights in data and databases; (d) trade secrets, know-how and other confidential information; and (e) other intellectual property rights.
- 1.14 “**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental agency or authority, unincorporated organization, trust, association or other entity.
- 1.15 “**Personally Identifiable Information (PII)**” has the meaning set forth in **Section 10.1**.
- 1.16 “**RSS-II Contract**” has the meaning set forth in the recitals.
- 1.17 “**RSS-II Contract Services**” means any of the services ES is required to or otherwise does provide to the State under the RSS-II Contract.
- 1.18 “**RSS-II System**” has the meaning set forth in the recitals.
- 1.19 “**State**” has the meaning set forth in the preamble.
- 1.20 “**State Data**” has the meaning set forth in **Section 10.1**.
- 1.21 “**Term**” has the meaning set forth in **Section 9.1**.

2. **License of the RSS-II System.**

- 2.1 License. During the Term of this Agreement, the State hereby grants ES a license to copy, modify, create Derivative Works, and an exclusive and perpetual license to promote, market, bid, and sublicense the RSS-II System or Derivative Work, to any Customer or prospective customer, in accordance with the terms and conditions of this Agreement. This license grant shall include the right to maintain copies of and operate the RSS-II System for the purposes of modification, operation, building, testing, and backup.
- 2.2 Assignment of Derivative Works. Subject to the State's retention of its ownership rights in the underlying RSS-II System, State hereby assigns to ES all Intellectual Property Rights in all Derivative Works created hereunder.
- 2.3 Derivative Works License Terms. ES will provide Derivative Works to a Customer under license terms determined by ES and the Customer; including that such license may be royalty-free, irrevocable and perpetual. Such license terms will include use restrictions and confidentiality obligations. ES has the sole authority and responsibility to determine, and discuss, the prices at which the Derivative Works will be provided to such Customer. Any updates, enhancements or other changes made to the RSS-II System or Derivative Work specifically for a Customer will be the property of either ES or the Customer as agreed to by ES and such Customer. However, ES will use its commercially efforts to obtain a perpetual, fully paid up, royalty-free, non-exclusive license for the State to use any such updates, enhancements or changes while ES is the Customer's Developer for any such updates, enhancements or changes for RSS-II. Consistent with Section 2.2, the State assigns to ES any updates, enhancements or other changes made to the RSS-II System not for a specific Customer. Upon request and in accordance with Section 3 below, ES will provide the State perpetual, fully paid up, royalty-free, non-exclusive license for the State to use any such updates, enhancements or changes made by ES not for a specific Customer.
- 2.4 Sublicense Terms. ES will provide the RSS-II System to a Customer under sublicense terms and conditions determined by ES and the Customer, including that such license may be royalty-free, irrevocable and perpetual. Such sublicense terms will include use restrictions and confidentiality obligations. ES has the sole authority and responsibility to determine, and discuss, the prices at which the RSS-II System will be provided and sublicensed to such Customer. Any updates, enhancements or other changes made to the RSS-II System specifically for a Customer will be the property of either ES or the Customer as agreed to by ES and such Customer. However, ES will use its best efforts to obtain a perpetual, fully paid up, royalty-free license for the State to use any such updates, enhancements or changes while ES is the Customer's Developer for any such updates, enhancements or changes for RSS-II.
- 2.5 Right to Payment for Derivative Works License/Sublicensing. ES will be entitled to all amounts paid by a Customer arising out of or related to provision of the RSS-II System or Derivative Work.
- 2.6 Residual Knowledge. Nothing contained in this Agreement shall restrict either Party from the use of any ideas, concepts, know-how, methodologies, processes, technologies, algorithms or techniques relating Derivative Works created hereunder which either Party, individually or jointly, (i) owns prior to the Effective Date or Amended Date, or (ii) develops or discloses under

this Agreement, (iii) develops or obtains independently during the Term, or (iv) incidentally learns or develops in the course of performance and retains in the unaided memories of its personnel, provided that in doing so such Party does not breach its obligations of confidentiality or infringe the intellectual property rights of the other Party, or third parties, who have licensed or provided materials to the other Party.

3. **Compensation for License.** In consideration of the exclusive license granted by the State under this Agreement, ES will provide the State with the compensation set forth below:
 - 3.1 On the Effective Date, the State was credited Twenty Thousand Dollars (\$20,000) from ES to be used for Future Enhancements (the “**Initial Credit**”). At the State’s request, the State and ES will follow the procedures set forth in Section 1.104.2.10 of the RSS-II Contract for integration and implementation of such Future Enhancements. The State may offset any charges it incurs for integration and implementation of Future Enhancements under the RSS-II Contract by drawing down against the Initial Credit.
 - 3.2 For each new ES Customer Contract, the State will be credited Sixty Thousand Dollars (\$60,000) from ES to be used for Future Enhancements (each, an “**ES Customer Contract Credit**”). At the State’s request, The State and ES will follow the procedures set forth in Section 1.104.2.10 of the RSS-II Contract for implementation of such Future Enhancements. If the State cannot or chooses not to use modification pool hours for integration and implementation, the State shall compensate ES for the integration and implementation costs in accordance with the job classification rates under the RSS-II Contract. The State may offset any charges it incurs for integration and implementation of Future Enhancements under the RSS-II Contract by drawing down against any ES Customer Contract Credit. ES shall notify the State within fifteen (15) days of the execution of any ES Customer Contract. Further, ES shall provide annual reports to the State, which detail the availability of, and usage by, the State of the ES Customer Contract Credits.
 - 3.3 If any amount of the Initial Credit or any ES Customer Contract Credit remains unused by the State upon expiration or termination of the RSS-II Contract, ES shall pay to the State the remaining aggregate amount of the credits in cash, which will be payable by ES to the State within thirty (30) days of the RSS-II Contract’s expiration or termination.
 - 3.4 After RSS-II Contract expiration or termination, ES shall continue to notify the State within fifteen (15) days of the execution of any new ES Customer Contract. ES will pay the State Sixty Thousand Dollars (\$60,000) in cash for each new ES Customer Contract entered into after RSS-II Contract expiration or termination, which will be payable by ES within thirty (30) days of execution of the new ES Customer Contract.
4. **State Marketing Responsibilities.** The State will be responsible for the following marketing activities in connection with the license granted under this Agreement:
 - 4.1 Make ES aware of local or national hunting, fishing and wildlife or similar conferences that the State has been invited to attend and, as appropriate, make presentations regarding the value of systems such as the RSS-II System;
 - 4.2 Exert all reasonable efforts to identify and generate business opportunities that call for the use of a system similar to the RSS-II System and notify ES of such opportunities; and

- 4.3 Upon the request of ES : participate in presentations at the prospective customer's site; conduct a presentation and demonstration of the RSS-II System for a prospective customer at a State location, provided such presentation will not display or disclose any State Data; assist in drafting or providing technical review of ES 's proposal(s) created in response to a particular procurement; assist in the assessment of state needs and readiness to procure the RSS-II System; and provide introductions for ES representatives to a prospective customer official(s) not previously known to ES .
5. **ES Marketing Obligations.** ES will be responsible for the following marketing activities in connection with the license granted under this Agreement:
- 5.1 Exert reasonable efforts to identify and generate business opportunities that call for the use of a system similar to the RSS-II System and notify the State of all such opportunities; and
- 5.2 Consider all opportunities for the RSS-II System identified by the State and, for each such opportunity deemed by ES worthy of pursuing, forward such opportunity to the appropriate ES sales or marketing person.
6. **Promotional Materials.** ES and the State shall cooperate with each other in preparing materials to promote the RSS-II System and Derivative Works including, but not limited to, brochures, slides and other presentation materials. Except for announcements or documents intended solely for internal distribution by ES or the State, neither party will be entitled to use the name, trademark(s) or other proprietary information of the other in promotional, advertising and other materials without receiving the prior written consent of the other party.
7. **Expenses.** Each party shall bear its own costs and expenses incurred in connection with the performance of any of its obligations under this Agreement including, but not limited to, travel expenses. ES will use its best efforts to reduce expenses incurred by the State by utilizing phone or video conferencing tools where appropriate.
8. **Liability of ES to Customers and Prospective Customers.**
- 8.1 The State shall have no liability to any Customer or potential customer of ES with respect to the RSS-II System itself, or with respect to the promotion, marketing, bidding, or sublicensing of the RSS-II System or Derivative Work.
- 8.2 ES or its Customers shall be responsible for maintaining, updating or enhancing the RSS-II System for Customers or Derivative Work.
- 8.3 The State does not warrant that the functions contained in the RSS-II System or Derivative Work will meet the requirements of ES or any of its Customers or that the operation of the RSS-II System or Derivative Work will be uninterrupted or error free. ES and any of its Customers bear the entire risk regarding the quality and performance of the RSS-II System or Derivative Work.
- 8.4 The State specifically disclaims any warranty that the RSS-II System does not infringe any Intellectual Property Rights of any Person. Accordingly, ES shall be solely responsible to indemnify, defend and hold harmless any Customer from and against all losses, liabilities,

damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against such Customer to the extent that the action or proceeding is based on a claim that the ES coded RSS-II System or the operation of the RSS-II System, or the use or reproduction of any Documentation provided with the RSS-II System infringes any Intellectual Property Rights of any Person.

9. **Term and Termination.**

- 9.1 **Term.** The term of this Agreement commences on the Effective Date and will continue in effect, unless earlier terminated, through June 1, 2030 (the "**Term**"). For the avoidance of doubt, even after expiration or termination of this Agreement, any sublicense or license for the RSS-II System or Derivative Work provided to a Customer consistent with this Agreement shall remain in effect for such length and under such terms as determined by ES and the Customer, including that ES may modify the RSS-II System or Derivative Work for Customer in order to repair or fix identified issues.
- 9.2 **Renewal.** This Agreement may be renewed for up to five (5) additional one (1) year periods. Renewal must be by written agreement of the parties, and will automatically extend the Term of this Agreement.
- 9.3 **Termination.** The State may terminate this Agreement if ES, as determined by the State: (i) endangers the value, integrity, or security of any State systems, data, facility or personnel; (ii) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (iii) engages in any conduct that may expose the State to liability; or (iv) breaches any of its material duties or obligations under this Agreement.
- 9.4 **Effect of Expiration or Termination.** Upon expiration or termination of this Agreement, all license rights granted under this Agreement shall automatically terminate, except that any sublicenses or licenses granted to any Customer will not terminate except pursuant to their own terms.

10. **State Data.**

- 10.1 **Ownership.** With the exception of system data which includes system design, and tables that drive system functionality, and that contains data that is not considered "State Data" as defined in this section, the State's data ("**State Data**," which shall also be known and treated by ES as Confidential Information) shall include: (a) the State's data collected, used, processed, stored, or generated as the result of the RSS-II Contract Services; and (b) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the RSS-II Contract Services, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements listed here. State Data is and shall 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 shall survive the termination of this Agreement.

10.2 ES's Use of State Data. ES is provided a limited license to State Data for the sole and exclusive purpose of providing the RSS-II Contract Services, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the RSS-II Contract Services. ES shall not use any State Data in promoting, marketing, bidding or sublicensing the RSS-II System. Further, ES shall not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for ES's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section shall survive the termination of this Agreement.

10.3 Compromise of State Data. In the event of any unauthorized access to State Data, ES shall, as applicable: (a) notify the State as soon as practicable (b) cooperate with the State in investigating the occurrence, including making available to the State or law enforcement all relevant records, logs, files, data reporting, and other materials required to comply with applicable law; (c) in the case of unauthorized access to PII, at the State's sole election unless otherwise required by law, notify the affected individuals as soon as practicable but no later than is required to comply with applicable law, (d) perform or take any other actions required to comply with applicable law as a result of the occurrence; (e) 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 in an amount not to exceed \$100,000; (f) without limiting ES's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless the State for any and all claims based on ES's negligence, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence. The State shall have the option to review and approve any notification sent to affected individuals prior to its delivery, except as otherwise required by law. This Section shall survive the termination of this Agreement.

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

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

party). For purposes of this Agreement, in all cases and for all matters, State Data shall be deemed to be Confidential Information.

- 11.2 Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Agreement; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) ES obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of ES or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- 11.3 Cooperation to Prevent Disclosure of Confidential Information. Each party shall 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 shall 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 Agreement and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- 11.4 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 Agreement.
- 11.5 Surrender of Confidential Information upon Termination. Upon termination of this Agreement, in whole or in part, each party shall, within five (5) calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control. Should ES or the State determine that the return of any Confidential Information is not feasible, such party shall destroy the Confidential Information and shall certify the same in writing within five (5) calendar days from the date of termination to the other party.

12. **Indemnification.**

- 12.1 General Indemnification. To the extent permitted by law, ES shall indemnify, defend and hold harmless the State from liability of any kind, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by ES in the performance of this Agreement and

that are attributable to the acts of ES or any of its subcontractors, or by anyone else for whose acts any of them may be liable.

- 12.2 Intellectual Property Rights Indemnification. To the extent permitted by law, ES shall indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that the RSS-II System or any Derivative Work, or the operation of the RSS-II system or the Derivative Work, or the use or reproduction of any Documentation infringes any Intellectual Property Rights of any Person, which is enforceable under the laws of the United States.
- 12.3 Indemnification Procedures. The State will notify ES in writing if indemnification is sought; however, failure to do so will not relieve ES, except to the extent that ES is materially prejudiced. ES must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations. The State is entitled to: (a) regular updates on proceeding status; (b) participate in the defense of the proceeding; (c) employ its own counsel. ES 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. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim. Any litigation activity on behalf of the State or any of its subdivisions, under this Section 12, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.
- 12.4 Limitation of Liability. Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract. The Contractor's liability for damages to the State is limited to one times the value of the Contract or \$500,000 whichever is higher. The foregoing limitation of liability does not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

13. **Miscellaneous.**

- 13.1 Governing Law. This Agreement 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 Agreement are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Agreement must be resolved in the Michigan Court of Claims. Complaints against the State must be initiated in Ingham County, Michigan. ES waives any objections,

such as lack of personal jurisdiction or forum non conveniens. ES must appoint agents in Michigan to receive service of process.

- 13.2 Export Restrictions. The RSS System and any Derivative Work are subject to laws and regulations governing its export, import or other transfer, including the export, import and sanctions laws of the United States and other applicable jurisdictions (“Trade Laws and Regulations”). ES agrees to comply with all such applicable Trade Laws and Regulations and to obtain any required export, re-export, re-transfer, or import authorizations with respect to the RSS System and any Derivative Work, including those arising from release or transfer of technical data. ES further agrees it will not, without any required authorization, transfer to the RSS System and any Derivative Work to (1) Countries or territories subject to comprehensive embargoes under applicable Trade Laws and Regulations, including Cuba, Iran, North Korea, Sudan, Syria and the Crimea Territory of Ukraine, as of November 2016; (2) companies, persons, governments, or other parties subject to trade control sanctions or blocking measures under applicable Trade Laws and Regulations, including but not limited to those designated on any lists of denied or restricted parties included in the United States Departments of State, Commerce and Treasury Consolidated Screening List (available at http://export.gov/ecr/eg_main_023148.asp) or the European Union (EU) (available at http://eeas.europa.eu/cfsp/sanctions/consol-list/index_en.htm); or (3) any end user or for any end use, involving nuclear, chemical, or biological weapons proliferation, or development of missile technology.
- 13.3 Force Majeure. Neither party will be liable or responsible to the other party, nor will be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, 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 Agreement; national or regional emergency; or any passage of law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition. Each of the foregoing, a “**Force Majeure**,” in each case, provided that: (a) such event is outside the reasonable control of the affected party; (b) the affected party provides prompt notice to the other party, stating the period of time the occurrence is expected to continue; and (c) the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure event
- 13.4 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement 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 shall have authority to contract for or bind the other party in any manner whatsoever.
- 13.5 Assignment. Neither party may assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the other party’s prior written consent.
- 13.6 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement, 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 Agreement.

- 13.7 Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing, identified as an amendment to this Agreement and signed by an authorized representative of both parties. Further, certain amendments to this Agreement may require State Administrative Board Approval. No waiver by any party of any of the provisions of this Agreement will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver. Nor will any single or partial exercise of any right, remedy, power or privilege under this Agreement preclude the exercise of any other right, remedy, power or privilege
- 13.8 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement 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 must negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions be consummated as originally contemplated to the greatest extent possible.
- 13.9 Entirety. This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.
- 13.10 Counterparts. This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by email delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original.

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

**NOTICE
OF
CONTRACT NO. 071B4300127
between
THE STATE OF MICHIGAN
and**

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
HP Enterprise Services, LLC 5400 Legacy Drive Plano, TX 75024	Debbie Popa	debra.popa@hp.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	517-627-7691	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM ADMINISTRATOR	DNR	Denise Gruben	517-284-6047	grubend@michigan.gov
CONTRACT ADMINSTRATOR/BUYER	DTMB	Whitnie Zuker	517-284-7030	zukerw@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION:			
RSS-II License Agreement			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
6 years	June 1, 2014	June 1, 2020	5, 1 Year Options
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MIDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:		\$ 0	

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

CONTRACT NO. 071B4300127

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
HP Enterprise Services, LLC 5400 Legacy Drive Plano, TX 75024	Debbie Popa	debra.popa@hp.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	517-627-7691	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM ADMINISTRATOR	DNR	Denise Gruben	517-284-6047	grubend@michigan.gov
CONTRACT ADMINISTRATOR/BUYER	DTMB	Whitnie Zuker	517-284-7030	zukerw@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION:			
RSS-II License Agreement			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
6 years	June 1, 2014	June 1, 2020	5, 1 Year Options
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:		\$ 0	

THIS IS NOT AN ORDER: Per vendor agreement, DTMB Procurement approval, and State Administration Board approval dated May 21, 2014.

Notice of Contract #: 071B4300127

FOR THE CONTRACTOR:	FOR THE STATE:
HP Enterprise Services, LLC	Signature
Firm Name	Genevieve Hayes, Acting Division Director
Authorized Agent Signature	Name/Title
Authorized Agent (Print or Type)	DTMB Procurement
Date	Enter Name of Agency
	Date

License Agreement

This License Agreement (this "**Agreement**") is entered into this ____ day of June, 2014 (the "**Effective Date**"), by and between the State of Michigan, Department of Technology, Management and Budget on behalf of the Department of Natural Resources (collectively, the "**State**") and HP Enterprise Services, LLC, a Delaware limited liability company, with a principal place of business at 5400 Legacy Drive, Plano, TX 75024 ("**HP**") (together with the State, the "**parties**").

Recitals

WHEREAS, under the terms of Contract No. 071B1300157, by and between the State and HP (the "**RSS-II Contract**"), HP is currently developing a new, web-based retail sales system with enhanced technology and features (the "**RSS-II System**"), which is intended to replace the State's legacy retail sales system that handles transactions for hunting, fishing and recreational vehicle licensing; and

WHEREAS, HP provides a full range of information technology services to, among others, state and local governments, and is interested in promoting, marketing, bidding and sublicensing the RSS-II System to such customers; and

WHEREAS, the State is willing to grant HP an exclusive license to promote, market, bid and sublicense the RSS-II System and to assist HP with certain marketing efforts in exchange for compensation, as set forth in this Agreement.

Whereas, this is a replacement license agreement for Contract 071B6000653, which expires upon execution of this license agreement,

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the State and HP agree as follows:

Agreement

1. **Definitions.** For purposes of this Agreement, in addition to the bold capitalized terms defined elsewhere in this Agreement, the following terms shall have the meanings given to them below.
 - 1.1 "**Agreement**" has the meaning set forth in the preamble.
 - 1.2 "**Confidential Information**" has the meaning set forth in **Section 11.1**.
 - 1.3 "**Customer**" means a state, local or other governmental entity with whom HP has signed an agreement to provide the RSS-II System.
 - 1.4 "**Derivative Work**" means any modification, addition, upgrade, update or improvement of the RSS-II System and any other work constituting a derivative work under the United States Copyright Act, 17 U.S.C. Section 101, *et seq.*
 - 1.5 "**Documentation**" means all user manuals, operating manuals, technical manuals and any other instructions, specifications, documents and materials, in any form or media, that describe the functionality, installation, testing, operation, use, maintenance, support and technical and other components, features and requirements of the RSS-II System.
 - 1.6 "**Effective Date**" has the meaning set forth in the preamble.
 - 1.7 "**Force Majeure**" has the meaning set forth in **Section 13.2**.

- 1.8 “**Future Enhancements**” means (i) any enhancements to the State’s RSS-II System, (ii) any new features developed for the State’s RSS-II System, or (iii) the integration of any other HP Customer Contract enhancements into the State’s RSS-II System.
- 1.9 “**HP**” has the meaning set forth in the preamble.
- 1.10 “**HP Customer Contract**” means an agreement executed between HP and a Customer pursuant to which HP will provide the RSS-II System for such Customer.
- 1.11 “**HP Customer Contract Credit**” has the meaning set forth in **Section 3.2**.
- 1.12 “**Initial Credit**” has the meaning set forth in **Section 3.1**.
- 1.13 “**Intellectual Property Rights**” means all or any of the following, 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 in any part of the world: (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 associated goodwill; (c) copyrights and copyrightable works (including computer programs), and rights in data and databases; (d) trade secrets, know-how and other confidential information; and (e) other intellectual property rights.
- 1.14 “**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental agency or authority, unincorporated organization, trust, association or other entity.
- 1.15 “**Personally Identifiable Information (PII)**” has the meaning set forth in **Section 10.1**.
- 1.16 “**RSS-II Contract**” has the meaning set forth in the recitals.
- 1.17 “**RSS-II Contract Services**” means any of the services HP is required to or otherwise does provide to the State under the RSS-II Contract.
- 1.18 “**RSS-II System**” has the meaning set forth in the recitals.
- 1.19 “**State**” has the meaning set forth in the preamble.
- 1.20 “**State Data**” has the meaning set forth in **Section 10.1**.
- 1.21 “**Term**” has the meaning set forth in **Section 9.1**.

2. **License of the RSS-II System.**

- 2.1 License. During the Term of this Agreement, the State hereby grants HP an exclusive license to promote, market, bid, and sublicense the RSS-II System, to any Customer or prospective customer, in accordance with the terms and conditions of this Agreement.
- 2.2 Sublicense Terms. HP will provide the RSS-II System to a Customer under sublicense terms and conditions determined by HP and the Customer, including that such license may be royalty-free, irrevocable and perpetual. Such sublicense terms will include use restrictions and

confidentiality obligations. HP has the sole authority and responsibility to determine, and discuss, the prices at which the RSS-II System will be provided and sublicensed to such Customer. Any updates, enhancements or other changes made to the RSS-II System specifically for a Customer will be the property of either HP or the Customer as agreed to by HP and such Customer. However, HP will use its best efforts to obtain a perpetual, fully paid up, royalty-free license for the State to use any such updates, enhancements or changes while HP is the Customer's Developer for any such updates, enhancements or changes for RSS-II.

- 2.3 **Right to Payment for Sublicensing.** HP will be entitled to all amounts paid by a Customer arising out of or related to provision of the RSS-II System.
3. **Compensation for License.** In consideration of the exclusive license granted by the State under this Agreement, HP will provide the State with the compensation set forth below:
 - 3.1 On the Effective Date, the State will be credited Twenty Thousand Dollars (\$20,000) from HP to be used for Future Enhancements (the “**Initial Credit**”). The State and HP will follow the procedures set forth in Section 1.104.2.10 of the RSS-II Contract for implementation of such Future Enhancements. The State may offset any charges it incurs for implementation of Future Enhancements under the RSS-II Contract by drawing down against the Initial Credit.
 - 3.2 For each new HP Customer Contract, the State will be credited Twenty Thousand Dollars (\$20,000) from HP to be used for Future Enhancements (each, a “**HP Customer Contract Credit**”). The State and HP will follow the procedures set forth in Section 1.104.2.10 of the RSS-II Contract for implementation of such Future Enhancements. The State may offset any charges it incurs for implementation of Future Enhancements under the RSS-II Contract by drawing down against any HP Customer Contract Credit. HP shall notify the State within fifteen (15) days of the execution of any HP Customer Contract. Further, HP shall provide annual reports to the State, which detail the availability of, and usage by, the State of the HP Customer Contract Credits.
 - 3.3 If any amount of the Initial Credit or any HP Customer Contract Credit remains unused by the State upon expiration or termination of the RSS-II Contract, HP shall pay to the State the remaining aggregate amount of the credits in cash, which will be payable by HP to the State within thirty (30) days of the RSS-II Contract's expiration or termination.
 - 3.4 After RSS-II Contract expiration or termination, HP shall continue to notify the State within fifteen (15) days of the execution of any new HP Customer Contract. HP will pay the State Twenty Thousand Dollars (\$20,000) in cash for each new HP Customer Contract entered into after RSS-II Contract expiration or termination, which will be payable by HP within thirty (30) days of execution of the new HP Customer Contract.
4. **State Marketing Responsibilities.** The State will be responsible for the following marketing activities in connection with the license granted under this Agreement:
 - 4.1 Make HP aware of local or national hunting, fishing and wildlife or similar conferences that the State has been invited to attend and, as appropriate, make presentations regarding the value of systems such as the RSS-II System;

- 4.2 Exert all reasonable efforts to identify and generate business opportunities that call for the use of a system similar to the RSS-II System and notify HP of such opportunities; and
 - 4.3 Upon the request of HP: participate in presentations at the prospective customer's site; conduct a presentation and demonstration of the RSS-II System for a prospective customer at a State location, provided such presentation will not display or disclose any State Data; assist in drafting or providing technical review of HP's proposal(s) created in response to a particular procurement; assist in the assessment of state needs and readiness to procure the RSS-II System; and provide introductions for HP representatives to a prospective customer official(s) not previously known to HP.
5. **HP Marketing Obligations.** HP will be responsible for the following marketing activities in connection with the license granted under this Agreement:
 - 5.1 Exert reasonable efforts to identify and generate business opportunities that call for the use of a system similar to the RSS-II System and notify the State of all such opportunities; and
 - 5.2 Consider all opportunities for the RSS-II System identified by the State and, for each such opportunity deemed by HP worthy of pursuing, forward such opportunity to the appropriate HP sales or marketing person.
6. **Promotional Materials.** HP and the State shall cooperate with each other in preparing materials to promote the RSS-II System including, but not limited to, brochures, slides and other presentation materials. Except for announcements or documents intended solely for internal distribution by HP or the State, neither party will be entitled to use the name, trademark(s) or other proprietary information of the other in promotional, advertising and other materials without receiving the prior written consent of the other party.
7. **Expenses.** Each party shall bear its own costs and expenses incurred in connection with the performance of any of its obligations under this Agreement including, but not limited to, travel expenses. HP will use its best efforts to reduce expenses incurred by the State by utilizing phone or video conferencing tools where appropriate.
8. **Liability of HP to Customers and Prospective Customers.**
 - 8.1 The State shall have no liability to any Customer or potential customer of HP with respect to the RSS-II System itself, or with respect to the promotion, marketing, bidding, or sublicensing of the RSS-II System.
 - 8.2 HP or its Customers shall be responsible for maintaining, updating or enhancing the RSS-II System for Customers.
 - 8.3 The State does not warrant that the functions contained in the RSS-II System will meet the requirements of HP or any of its Customers or that the operation of the RSS-II System will be uninterrupted or error free. HP and any of its Customers bear the entire risk regarding the quality and performance of the RSS-II System.

- 8.4 The State specifically disclaims any warranty that the RSS-II System does not infringe any Intellectual Property Rights of any Person. Accordingly, HP shall be solely responsible to indemnify, defend and hold harmless any Customer from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against such Customer to the extent that the action or proceeding is based on a claim that the HP coded RSS II System or the operation of the RSS-II System, or the use or reproduction of any Documentation provided with the RSS-II System infringes any Intellectual Property Rights of any Person.

9. **Term and Termination.**

- 9.1 **Term.** The term of this Agreement commences on the Effective Date and will continue in effect, unless earlier terminated, through June [], 2020 (the "**Term**").
- 9.2 **Renewal.** This Agreement may be renewed for up to five (5) additional one (1) year periods. Renewal must be by written agreement of the parties, and will automatically extend the Term of this Agreement.
- 9.3 **Termination.** The State may terminate this Agreement if HP, as determined by the State: (i) endangers the value, integrity, or security of any State systems, data, facility or personnel; (ii) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (iii) engages in any conduct that may expose the State to liability; or (iv) breaches any of its material duties or obligations under this Agreement.
- 9.4 **Effect of Expiration or Termination.** Upon expiration or termination of this Agreement, all license rights granted under this Agreement shall automatically terminate, except that any sublicenses granted to any Customer will not terminate except pursuant to their own terms.

10. **State Data.**

- 10.1 **Ownership.** With the exception of system data which includes system design, and tables that drive system functionality, and that contains data that is not considered "State Data" as defined in this section, the State's data ("**State Data**," which shall also be known and treated by HP as Confidential Information) shall include: (a) the State's data collected, used, processed, stored, or generated as the result of the RSS-II Contract Services; and (b) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the RSS-II Contract Services, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements listed here. State Data is and shall 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 shall survive the termination of this Agreement.
- 10.2 **HP's Use of State Data.** HP is provided a limited license to State Data for the sole and exclusive

purpose of providing the RSS-II Contract Services, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the RSS-II Contract Services. HP shall not use any State Data in promoting, marketing, bidding or sublicensing the RSS-II System. Further, HP shall not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for HP's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section shall survive the termination of this Agreement.

- 10.3 **Compromise of State Data.** In the event of any unauthorized access to State Data, HP shall, as applicable: (a) notify the State as soon as practicable (b) cooperate with the State in investigating the occurrence, including making available to the State or law enforcement all relevant records, logs, files, data reporting, and other materials required to comply with applicable law; (c) in the case of unauthorized access to PII, at the State's sole election unless otherwise required by law, notify the affected individuals as soon as practicable but no later than is required to comply with applicable law, (d) perform or take any other actions required to comply with applicable law as a result of the occurrence; (e) 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 in an amount not to exceed \$100,000; (f) without limiting HP's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless the State for any and all claims based on HP's negligence, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence. The State shall have the option to review and approve any notification sent to affected individuals prior to its delivery, except as otherwise required by law. This Section shall survive the termination of this Agreement.

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

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

- 11.2 Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Agreement; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) HP obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of HP or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- 11.3 Cooperation to Prevent Disclosure of Confidential Information. Each party shall 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 shall 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 Agreement and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- 11.4 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 Agreement.
- 11.5 Surrender of Confidential Information upon Termination. Upon termination of this Agreement, in whole or in part, each party shall, within five (5) calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control. Should HP or the State determine that the return of any Confidential Information is not feasible, such party shall destroy the Confidential Information and shall certify the same in writing within five (5) calendar days from the date of termination to the other party.

12. **Indemnification.**

- 12.1 General Indemnification. To the extent permitted by law, HP shall indemnify, defend and hold harmless the State from liability of any kind, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by HP in the performance of this Agreement and that are attributable to the acts of HP or any of its subcontractors, or by anyone else for whose acts any of them may be liable.

- 12.2 Intellectual Property Rights Indemnification. To the extent permitted by law, HP shall indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that the RSS-II System or any Derivative Work, or the operation of the RSS-II system or the Derivative Work, or the use or reproduction of any Documentation infringes any Intellectual Property Rights of any Person, which is enforceable under the laws of the United States.
- 12.3 Indemnification Procedures. The State will notify HP in writing if indemnification is sought; however, failure to do so will not relieve HP, except to the extent that HP is materially prejudiced. HP must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations. The State is entitled to: (a) regular updates on proceeding status; (b) participate in the defense of the proceeding; (c) employ its own counsel. HP 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. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim. Any litigation activity on behalf of the State or any of its subdivisions, under this Section 12, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.
- 12.4 Limitation of Liability. Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract. The Contractor's liability for damages to the State is limited to one times the value of the Contract or \$500,000 whichever is higher. The foregoing limitation of liability does not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

13. **Miscellaneous.**

- 13.1 Governing Law. This Agreement 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 Agreement are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Agreement must be resolved in the Michigan Court of Claims. Complaints against the State must be initiated in Ingham County, Michigan. HP waives any objections, such as lack of personal jurisdiction or forum non conveniens. HP must appoint agents in Michigan to receive service of process.

- 13.2 Force Majeure. Neither party will be liable or responsible to the other party, nor will be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, 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 Agreement; national or regional emergency; or any passage of law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition. Each of the foregoing, a “**Force Majeure**,” in each case, provided that: (a) such event is outside the reasonable control of the affected party; (b) the affected party provides prompt notice to the other party, stating the period of time the occurrence is expected to continue; and (c) the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure event
- 13.3 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement 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 shall have authority to contract for or bind the other party in any manner whatsoever.
- 13.4 Assignment. Neither party may assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the other party’s prior written consent.
- 13.5 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement, 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 Agreement.
- 13.6 Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing, identified as an amendment to this Agreement and signed by an authorized representative of both parties. Further, certain amendments to this Agreement may require State Administrative Board Approval. No waiver by any party of any of the provisions of this Agreement will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver. Nor will any single or partial exercise of any right, remedy, power or privilege under this Agreement preclude the exercise of any other right, remedy, power or privilege
- 13.7 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement 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 must negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions be consummated as originally contemplated to the greatest extent possible.

- 13.8 Entirety. This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.
- 13.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by email delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original.

HP

HP Enterprise Services, LLC
Budget

By_____

Its:_____

STATE

Department of Technology, Management and

By _____

Its:_____

This Agreement was approved by the Michigan State Administrative Board on _____, 2014.