



**STATE OF MICHIGAN PROCUREMENT**  
 Department Technology, Management and Budget  
 Central Procurement Services  
 320 S Walnut Street Lansing, MI 48933  
 P.O. Box 30026, Lansing, MI 48909

**CONTRACT CHANGE NOTICE**

Change Notice Number **8**  
 to  
 Contract Number **MA071B7700112C**

<b>CONTRACTOR</b>	ENGINEERED PROTECTION SYSTEMS INC
	750 Front Ave NW Suite 200
	Grand Rapids MI 49504
	Jeremy Pifer
	616-826-0887
	jpifer@epssecurity.com
	CV0021651

<b>STATE</b>	<b>Program Manager</b>	Various	Various
<b>STATE</b>	<b>Contract Administrator</b>	Lisa Spitzley	DTMB
		(517) 249-0440	
		SpitzleyL4@michigan.gov	

**CONTRACT SUMMARY**

Security Intrusion Alarm and Card Access Equipment, Monitoring			
<b>INITIAL EFFECTIVE DATE</b>	<b>INITIAL EXPIRATION DATE</b>	<b>INITIAL AVAILABLE OPTIONS</b>	<b>EXPIRATION DATE BEFORE</b>
January 1, 2017	December 31, 2020	5 - 1 Year	December 31, 2025
<b>PAYMENT TERMS</b>		<b>DELIVERY TIMEFRAME</b>	
Net 45		N/A	
<b>ALTERNATE PAYMENT OPTIONS</b>		<b>EXTENDED PURCHASING</b>	
<input type="checkbox"/> P-Card <input checked="" type="checkbox"/> Direct Voucher (PRC) <input type="checkbox"/> Other		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>MINIMUM DELIVERY REQUIREMENTS</b>			
N/A			

**DESCRIPTION OF CHANGE NOTICE**

<b>OPTION</b>	<b>LENGTH OF OPTION</b>	<b>EXTENSION</b>	<b>LENGTH OF EXTENSION</b>	<b>REVISED EXP. DATE</b>
<input type="checkbox"/>	5, 1-Year	<input checked="" type="checkbox"/>	5 Years	December 31, 2030
<b>CURRENT VALUE</b>	<b>VALUE OF CHANGE NOTICE</b>	<b>ESTIMATED AGGREGATE CONTRACT VALUE</b>		
\$852,312.00	\$560,000.00	\$1,412,312.00		

**DESCRIPTION**

Effective September 25, 2025, this Contract is extended 5 years, with 5, 1-year options. The revised contract expiration date is December 31, 2030. Please note this is a Useful Life Extension to cover repairs and maintenance of existing equipment and monitoring services during the life of the contract.

All other terms, conditions, specifications, and pricing remain the same. Per Contractor and Agency agreement, DTMB Procurement approval, and State Administrative Board approval on September 25, 2025.

**Program Managers  
for  
Multi-Agency and Statewide Contracts**

AGENCY	NAME	PHONE	EMAIL
MSL	Benjamin Vogel		VogelB@michigan.gov
DNR	Laura Gyorkos		gyorkosl@michigan.gov



**STATE OF MICHIGAN**  
**CENTRAL PROCUREMENT SERVICES**  
 Department of Technology, Management, and Budget  
 320 S. WALNUT ST., LANSING, MICHIGAN 4893  
 P.O. BOX 30026 LANSING, MICHIGAN 48909

**CONTRACT CHANGE NOTICE**

Change Notice Number 7  
 to  
 Contract Number 071B7700112

<b>CONTRACTOR</b>	ENGINEERED PROTECTION SYSTEMS INC
	750 Front Ave NW , Suite 200
	Grand Rapids, MI 49504
	Scott Harig
	616-666-1029
	sharig@epssecurity.com
	CV0021651

<b>STATE</b>	<b>Program Manager</b>	Benjamin Vogel	MSL
		517-241-2410	
		vogelb@Michigan.gov	
	<b>Contract Administrator</b>	Lisa Spitzley	DTMB
		(517) 249-0440	
		spitzleyl4@michigan.gov	

**CONTRACT SUMMARY**

<b>INTRUSION ALARM AND CARD ACCESS EQUIPMENT, MONITORING SERVICES</b>			
<b>INITIAL EFFECTIVE DATE</b>	<b>INITIAL EXPIRATION DATE</b>	<b>INITIAL AVAILABLE OPTIONS</b>	<b>EXPIRATION DATE BEFORE</b>
January 1, 2017	December 31, 2020	5 - 1 Year	December 31, 2023
<b>PAYMENT TERMS</b>		<b>DELIVERY TIMEFRAME</b>	
Net 45 Days		N/A	
<b>ALTERNATE PAYMENT OPTIONS</b>			<b>EXTENDED PURCHASING</b>
<input type="checkbox"/> P-Card	<input type="checkbox"/> PRC	<input type="checkbox"/> Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

<b>MINIMUM DELIVERY REQUIREMENTS</b>
N/A

<b>DESCRIPTION OF CHANGE NOTICE</b>				
<b>OPTION</b>	<b>LENGTH OF OPTION</b>	<b>EXTENSION</b>	<b>LENGTH OF EXTENSION</b>	<b>REVISED EXP. DATE</b>
<input checked="" type="checkbox"/>	Two, 1-Year	<input type="checkbox"/>	N/A	December 31, 2025
<b>CURRENT VALUE</b>	<b>VALUE OF CHANGE NOTICE</b>	<b>ESTIMATED AGGREGATE CONTRACT VALUE</b>		
\$602,312.00	\$250,000.00	\$852,312.00		

**DESCRIPTION**

Effective March 28, 2023, this contract is amended as follows:

1. Exercise the two remaining option years available on this contract; revised expiration date is December 31, 2025;
2. Add Increase of \$250,000.00;
3. Add Michigan State Police (MSP) as an authorized user to this contract for equipment and service(s);
4. Schedule B, Pricing updated to include \$125.00 annual monitoring fee, for MSP.

All other terms, conditions, specifications, and pricing remain the same. Per Contractor and Agency agreement, DTMB Procurement approval, and State Administrative Board approval on March 28, 2023.

**Program Managers  
for  
Multi-Agency and Statewide Contracts**

<b>AGENCY</b>	<b>NAME</b>	<b>PHONE</b>	<b>EMAIL</b>
MSL	Ben Vogel	517-241-2410	VogelB@michigan.gov
MSP	John Lucey	989-348-5449	LuceyJ@michigan.gov



**STATE OF MICHIGAN**  
**CENTRAL PROCUREMENT SERVICES**  
 Department of Technology, Management, and Budget  
 320 S. WALNUT ST., LANSING, MICHIGAN 48933  
 P.O. BOX 30026 LANSING, MICHIGAN 48909

**CONTRACT CHANGE NOTICE**

Change Notice Number **6**  
 to  
 Contract Number **071B7700112**

<b>CONTRACTOR</b>	ENGINEERED PROTECTION SYSTEMS INC
	750 Front Ave NW , Suite 200
	Grand Rapids, MI 49504
	Scot A. Harig
	616-666-1029
	sharig@epssecurity.com
	CV0021651

<b>STATE</b>	<b>Program Manager</b>	Benjamin Vogel	MSL
		517-241-2410	
		vogelb@Michigan.gov	
	<b>Contract Administrator</b>	Lisa Spitzley	DTMB
		(517) 249-0440	
		spitzleyl4@michigan.gov	

**CONTRACT SUMMARY**

INTRUSION ALARM AND CARD ACCESS EQUIPMENT, MONITOR

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
January 1, 2017	December 31, 2020	5 - 1 Year	December 31, 2022

PAYMENT TERMS	DELIVERY TIMEFRAME
Net 45 Days	N/A

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**

N/A

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	One, 1-Year	<input type="checkbox"/>		December 31, 2023

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
\$602,312.00	\$0.00	\$602,312.00

**DESCRIPTION**

Effective December 5, 2022, the third of 5 option years available on this contract is hereby exercised and the revised expiration date is December 31, 2023. All other terms, conditions, specifications, and pricing remain the same. Per Vendor agreement and DTMB Central Procurement approval.

**Program Managers  
for  
Multi-Agency and Statewide Contracts**

AGENCY	NAME	PHONE	EMAIL
MSL	Ben Vogel	517-241-2410	VogelB@michigan.gov



**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 **5**  
 to  
 Contract Number **071B7700112**

<b>CONTRACTOR</b>	ENGINEERED PROTECTION SYSTEMS INC
	750 Front Ave NW , Suite 200
	Grand Rapids, MI 49504
	Scot Harig
	(616) 808-2981
	sharig@epssecurity.com
	CV0021651

<b>STATE</b>	<b>Program Manager</b>	Benjamin Vogel	MSL
		517-241-2410	
		vogelb@Michigan.gov	
	<b>Contract Administrator</b>	Lisa Spitzley	DTMB
		(517) 249-0440	
		spitzleyl4@michigan.gov	

<b>CONTRACT SUMMARY</b>				
<b>INTRUSION ALARM AND CARD ACCESS EQUIPMENT, MONITOR</b>				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE	
January 1, 2017	December 31, 2020	5 - 1 Year	December 31, 2021	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45 Days		N/A		
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				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	One, 1-Year	<input type="checkbox"/>		December 31, 2022
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$602,312.00	\$0.00	\$602,312.00		
DESCRIPTION				
Effective December 28, 2021, the second of 5 option years of this contract is hereby exercised and the revised expiration date is December 31, 2022. Please note, the Contract Administrator has been changed to Lisa Spitzley. All other terms, conditions, specifications, and pricing remain the same. Per Vendor agreement and DTMB Central Procurement approval.				



**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 **4**

to

Contract Number **071B7700112**

<b>CONTRACTOR</b>	ENGINEERED PROTECTION SYSTEMS INC
	750 Front Ave NW , Suite 200
	Grand Rapids, MI 49504
	Drew Fleming
	616-459-0281
	dflemming@epssecurity.com
	CV0021651

<b>STATE</b>	<b>Program Manager</b>	Benjamin Vogel	MSL
		517-241-2410	
		vogelb@michigan.gov	
	<b>Contract Administrator</b>	Steven Motz	DTMB
		(517) 331-6086	
		motzs1@michigan.gov	

**CONTRACT SUMMARY**

<b>INTRUSION ALARM AND CARD ACCESS EQUIPMENT, MONITOR</b>			
<b>INITIAL EFFECTIVE DATE</b>	<b>INITIAL EXPIRATION DATE</b>	<b>INITIAL AVAILABLE OPTIONS</b>	<b>EXPIRATION DATE BEFORE</b>
January 1, 2017	December 31, 2020	5 - 1 Year	December 31, 2021
<b>PAYMENT TERMS</b>		<b>DELIVERY TIMEFRAME</b>	
Net 45 Days		N/A	
<b>ALTERNATE PAYMENT OPTIONS</b>			<b>EXTENDED PURCHASING</b>
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>MINIMUM DELIVERY REQUIREMENTS</b>			
N/A			

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		N/A
<b>CURRENT VALUE</b>		<b>VALUE OF CHANGE NOTICE</b>		<b>ESTIMATED AGGREGATE CONTRACT VALUE</b>
\$602,312.00		\$0.00		\$602,312.00

**DESCRIPTION**

Effective January 25, 2021, the Program Manager for the State of Michigan has been updated. All other terms, conditions, specifications, and pricing remain the same. Per Vendor agreement and DTMB Central Procurement approval.



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

**CONTRACT CHANGE NOTICE**

Change Notice Number **3**

to

Contract Number **071B7700112**

<b>CONTRACTOR</b>	ENGINEERED PROTECTION SYSTEMS INC
	750 Front Ave NW , Suite 200
	Grand Rapids, MI 49504
	Drew Fleming
	616-459-0281
	dflemming@epssecurity.com
	CV0021651

<b>STATE</b>	<b>Program Manager</b>	Miguel Contreras	MSL
		517-335-5777	
		ContrerasM@Michigan.gov	
	<b>Contract Administrator</b>	Steven Motz	DTMB
		(517) 331-6086	
		motzs1@michigan.gov	

**CONTRACT SUMMARY**

<b>INTRUSION ALARM AND CARD ACCESS EQUIPMENT, MONITORING AND SERVICES</b>			
<b>INITIAL EFFECTIVE DATE</b>	<b>INITIAL EXPIRATION DATE</b>	<b>INITIAL AVAILABLE OPTIONS</b>	<b>EXPIRATION DATE BEFORE</b>
January 1, 2017	December 31, 2020	5 - 1 Year	December 31, 2020
<b>PAYMENT TERMS</b>		<b>DELIVERY TIMEFRAME</b>	
Net 45 Days		N/A	
<b>ALTERNATE PAYMENT OPTIONS</b>			<b>EXTENDED PURCHASING</b>
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

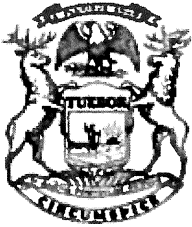
<b>MINIMUM DELIVERY REQUIREMENTS</b>
N/A

**DESCRIPTION OF CHANGE NOTICE**

<b>OPTION</b>	<b>LENGTH OF OPTION</b>	<b>EXTENSION</b>	<b>LENGTH OF EXTENSION</b>	<b>REVISED EXP. DATE</b>
<input checked="" type="checkbox"/>	1-Year	<input type="checkbox"/>		December 31, 2021
<b>CURRENT VALUE</b>	<b>VALUE OF CHANGE NOTICE</b>	<b>ESTIMATED AGGREGATE CONTRACT VALUE</b>		
\$602,312.00	\$0.00	\$602,312.00		

**DESCRIPTION**

Effective January 1, 2021, option year 1 of this contract is hereby exercised and the revised expiration date is changed to December 31, 2021. Please note, the Contract Administrator has been changed to Steve Motz. All other terms, conditions, specifications, and pricing remain the same. Per Vendor agreement and DTMB Central Procurement approval.



**STATE OF MICHIGAN  
ENTERPRISE PROCUREMENT**

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

**CONTRACT CHANGE NOTICE**

Change Notice Number **2**  
to  
Contract Number **071B7700112**

<b>CONTRACTOR</b>	Engineered Protection Systems (EPS)
	750 Front Ave NW
	Grand Rapids, MI 49504
	Drew Fleming
	616-459-0281
	dflemming@epssecurity.com
	CV0021651

<b>STATE</b>	Program Manager	Miguel Contreras	LOTT
		517-335-5777	
		ContrerasM@Michigan.gov	
	Contract Administrator	Steve Rigg	DTMB
		(517) 249-0454	
		riggs@michigan.gov	

**CONTRACT SUMMARY**

**INTRUSION ALARM AND CARD ACCESS EQUIPMENT, MONITORING AND SERVICES**

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
January 1, 2017	December 31, 2020	5 - 1 Year	December 31, 2020
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45 Days		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"/>		December 31, 2020
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$127,312.00	\$475,000.00	\$602,312.00		

**DESCRIPTION**

Effective July 27, 2018, this contract is hereby increased by \$475,000.00. All other terms, conditions, specifications, and pricing remain the same. Per Agency and Vendor agreement, and DTMB Central Procurement Services approval.



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

**CONTRACT CHANGE NOTICE**

Change Notice Number 1  
 to  
 Contract Number 071B7700112

<b>CONTRACTOR</b>	Engineered Protection Systems (EPS)
	750 Front Ave NW
	Grand Rapids, MI 49504
	Drew Fleming
	616-459-0281
	dflemming@epssecurity.com
	*****4884

<b>STATE</b>	<b>Program Manager</b>	Miguel Contreras	LOTT
		517-335-5777	
		ContrerasM@Michigan.gov	
	<b>Contract Administrator</b>	Steve Rigg	DTMB
		(517) 284-7043	
		riggs@michigan.gov	

CONTRACT SUMMARY				
INTRUSION ALARM AND CARD ACCESS EQUIPMENT, MONITORING AND SERVICES				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
January 1, 2017	December 31, 2020	5 - 1 Year	December 31, 2020	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		December 31, 2020
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$102,312.00	\$25,000.00	\$127,312.00		
DESCRIPTION				
Effective September 14, 2017, the Department of Natural Resources (DNR) is hereby added to this contract as an authorized user of Engineered Protection Systems (EPS) equipment and services. The following attached Purchase Orders and Service Agreements are binding between EPS and the DNR location at 2122 S M-37 Buildings A and B, Traverse City MI, 49684 only. All other terms, conditions, specifications and pricing remain the same. Per Agency and Vendor agreement, and DTMB Central Procurement approval.				



# Purchase Order and Service Agreement



MEMORANDUM OF AGREEMENT made this **14th** day of **September**, **2017** by and between **ENGINEERED PROTECTION SYSTEMS, INC.**, 750 Front N.W., Suite 300, Grand Rapids, MI 49504 hereinafter referred to as **EPS** and

**DEPARTMENT OF NATURAL RESOURCES** (Legal Name)

**2122 S M-37, Bldg A, Traverse City, MI 49685** (Address) hereinafter referred to as "Subscriber."

### A. SERVICES:

That for the consideration hereinafter mentioned, **EPS** agrees to furnish Subscriber with a System ("System") as specified in the Schedule of Protection (attached form SP-2) in the premises of the Subscriber at:

**Department of Natural Resources, 2122 S M-37, Bldg A, Traverse City, MI 49685**

and will, subject to the terms and conditions hereof, during the term of this agreement provide the following services.

- 1.  Monitoring
- 2.  Internet Monitoring (if checked, see Internet Monitoring Addendum)
- 3.  Cellular Protection Plan
- 4.  Service Agreement
- 5.  Cellular Back-Up
- 6.  Alarm Response
- 7.  Quarterly Fire Testing
- 8.  Activity Reports
- 9.  Opening & Closing Supervision
- 10.  Total Connect
- 11.  Access Control Administration

### B. PAYMENTS:

1. The subscriber agrees to pay **EPS**, its agents or assigns, the sum of **Three Thousand Three Hundred Eight and 00/100 Dollars (\$3,308.00)** plus tax. One half to be paid upon signing of this agreement and one half to be paid upon completion of installation of the equipment to be invoiced as stated below. The Subscriber agrees to pay **EPS**, its agents or assigns, in addition, for the services provided if checked above, the sum of **Nine Hundred Ninety-Six and 00/100 (\$996.00)** Dollars per annum, plus **One Hundred Eighty and 00/100 (\$180.00)** Dollars per annum for Communication charges, and is payable in quarterly installments of **Two Hundred Ninety-Four and 00/100 (\$294.00)** Dollars in advance. All undisputed invoices will be due and payable by subscriber, in accordance with subscriber's statutory payment procedure as specified in 1984 PA 279, MCL 17.51 et seq., within forty-five (45) days after receipt of **EPS** invoice. As required by MCL 18.1283a, **EPS** will electronically register with subscriber, to receive electronic fund transfer (EFT) payments.

2. In the event **EPS's** representative is sent to the Subscriber's premise in response to a service call or signal caused by the Subscriber improperly following operating instructions or failing to close or properly secure a window, door or other protected point, there shall be a service charge to the Subscriber, which subscriber agrees to pay upon billing by **EPS**.

### C. TERM:

1. Except as otherwise herein provided, this agreement shall remain in full force and effect for a period of three (3) years from the date System becomes operative, or the date of this contract, whichever is later.

2. Title to the equipment is to remain with **EPS** until the full purchase price is paid. Failure to pay the purchase price of the installed equipment when due shall give **EPS** the right, without obligation to redecorate or repair the premises or any other liability, to repossess that equipment with or without notice, and to avail itself of any legal remedy.

### D. LIMIT OF LIABILITY

IT IS UNDERSTOOD AND AGREED BY THE PARTIES HERETO THAT **EPS** IS NOT AN INSURER AND THAT INSURANCE, IF ANY, COVERING PERSONAL INJURY AND PROPERTY LOSS OR DAMAGE ON SUBSCRIBER'S PREMISES SHALL BE OBTAINED BY THE SUBSCRIBER: THAT **EPS** IS BEING PAID FOR THE INSTALLATION, MONITORING AND SERVICE OF SYSTEM DESIGNED TO REDUCE CERTAIN RISKS OF LOSS AND THAT THE AMOUNTS BEING CHARGED BY **EPS** ARE NOT SUFFICIENT TO GUARANTEE THAT NO LOSS WILL OCCUR; THAT **EPS** IS NOT ASSUMING RESPONSIBILITY FOR ANY PERSONAL INJURY OR PROPERTY LOSS OR DAMAGE WHICH MAY OCCUR EVEN IF DUE TO NEGLIGENT PERFORMANCE BY **EPS** OR BY ANY SUBCONTRACTORS USED BY **EPS** OR FAILURE TO PERFORM ANY OF ITS OBLIGATIONS, SINCE IT IS IMPRACTICAL AND EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES WHICH MAY ARISE DUE TO THE FAULTY OPERATION OF THE SYSTEM OR FAILURE OF SERVICES PROVIDED, IF, NOT WITHSTANDING THE ABOVE PROVISIONS, THERE SHOULD ARISE ANY LIABILITY ON THE PART OF **EPS**, SUCH LIABILITY SHALL BE LIMITED TO AN AMOUNT EQUAL TO ONE-HALF (1/2) THE ANNUAL SERVICE CHARGE PROVIDED HEREIN OR \$250.00, WHICHEVER IS THE LESSER, AND THIS LIABILITY SHALL BE EXCLUSIVE. IN THE EVENT THE SUBSCRIBER WISHES THE COMPANY TO ASSUME A GREATER OR HIGHER LIMITATION OF LIABILITY, THE SUBSCRIBER MAY, AS A MATTER OF RIGHT, OBTAIN FROM THE COMPANY A HIGHER LIMIT BY PAYING AN ADDITIONAL AMOUNT PROPORTIONED TO THE INCREASE IN DAMAGES, BUT SUCH ADDITIONAL OBLIGATION SHALL IN NO WAY BE INTERPRETED TO HOLD THE COMPANY AS AN INSURER. IF THE SYSTEM INCLUDES COMPONENTS MANUFACTURED BY HONEYWELL INTERNATIONAL INC ("HONEYWELL") THE SAME LIMITATION OF LIABILITY SHALL EXIST FOR ANY CLAIM MADE BY SUBSCRIBER AGAINST HONEYWELL. SUBSCRIBER AGREES THAT ANY LEGAL ACTION FOR A CLAIM WHICH IT MAY HAVE AGAINST **EPS** ARISING OUT OF **EPS'S** PERFORMANCE OF THIS CONTRACT MUST BE FILED WITHIN ONE YEAR OF THE DATE THAT THE CLAIM AROSE (WHICH IN THE CASE OF A LOSS SUFFERED BY CUSTOMER SHALL BE THE DATE THE LOSS OCCURRED) AND FURTHER AGREES THAT A CLAIM PERIOD OF ONE YEAR IS REASONABLE.

### E. LIMITED WARRANTY:

**EPS** DOES NOT MAKE ANY REPRESENTATION OR WARRANTY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS, THAT THE SYSTEM OR SERVICE SUPPLIED MAY NOT BE COMPROMISED OR THAT THE SYSTEM OR SERVICES WILL IN ALL CASES PROVIDE THE PROTECTION FOR WHICH IT IS INTENDED. THERE ARE NO IMPLIED WARRANTIES WHATSOEVER.

### F. SUBSCRIBER'S INDEMNIFICATION

DUE TO CONSTITUTIONAL PROHIBITIONS, SUBSCRIBER WILL NOT INDEMNIFY **EPS**, OR ITS EMPLOYEES OR AFFILIATES, FOR ANY REASON WHATSOEVER. SHALL NOT APPLY TO CLAIMS FOR LOSS OR DAMAGE SOLELY AND DIRECTLY CAUSED BY AN EMPLOYEE OF **EPS** WHILE ON SUBSCRIBER'S PREMISES.

### G. SUBCONTRACTORS:

SUBSCRIBER ACKNOWLEDGES THAT THE PROVISIONS OF THIS AGREEMENT, AND PARTICULARLY THOSE PARAGRAPHS RELATING TO DISCLAIMER OF WARRANTY, AND LIMIT OF LIABILITY INURE TO THE BENEFIT OF AND ARE APPLICABLE TO ANY SUBCONTRACTORS ENGAGED BY **EPS** TO PROVIDE MONITORING, INSTALLATION OR SERVICE OF THE SYSTEM PROVIDED HEREIN, AND BIND SUBSCRIBER TO SAID SUBCONTRACTOR WITH THE SAME FORCE AND EFFECT AS THEY BIND SUBSCRIBER TO **EPS**.

### H. APPROVAL:

This Agreement shall not be effective until executed in writing by an authorized representative of **EPS**. Further, this Agreement supersedes all previous Agreements and any Riders thereto, between the parties as to the premises listed above.

### I. ENTIRE AGREEMENT

The Agreement of the parties is expressed hereinabove and in the Terms and Conditions on the reverse side and no verbal understandings or agreement shall alter, change or modify the terms and provisions of this Agreement. It is understood and agreed by and between the parties hereto, that if there is any conflict between this Agreement and Subscriber's purchase order, or any other document, this agreement will govern, whether such purchase order or other document is prior or subsequent to this Agreement.

SUBSCRIBER ACKNOWLEDGES THAT THE LIABILITY OF **EPS** IS LIMITED AS SET FORTH IN PARAGRAPHS D, E, F AND G, AND ACCEPTS THE LIMIT SET FORTH THEREIN. SUBSCRIBER ACCEPTS ALL THE PROVISIONS OF THIS AGREEMENT AND AGREES THAT THERE HAS BEEN NO RELIANCE PLACED ON ANY PROVISION NOT APPEARING HEREIN.

**ENGINEERED PROTECTION SYSTEMS, INC.**  
Michigan License # 3601202358

**DT**

**SUBSCRIBER**

BY: \_\_\_\_\_  
Director of Sales

BY: \_\_\_\_\_ Date \_\_\_\_\_

Revision 2016.1

## TERMS AND CONDITIONS

- SUBSCRIBER'S AUTHORIZATION** – Subscriber hereby authorizes and empowers **EPS**, its agents or assigns as follows:

- A. To install said System as described in the Schedule of Protection at said location
  - B. To enter the premises for the purpose of inspecting, testing and repairing said System
  - C. To enter the premises in answer to a signal as representative and agent of Subscriber
- 2. SERVICE AGREEMENT:**
- A. Service for the equipment supplied under this Agreement will be provided by *EPS* if on the reverse side of this Agreement, Service Agreement is checked. All ordinary expenses of service and repairs shall be borne by *EPS* but if rendered necessary by alterations or repairs to the premises, such expenses shall be borne by Subscriber. If service agreement is not included, *EPS* will, if requested, provide the Subscriber with repair and parts replacement for the equipment at *EPS*'s prevailing prices and terms at the time.
  - B. Should any part of the system be damaged by fire, water or extraneous causes, repairs shall be paid for by Subscriber.
  - C. If Subscriber's insurer, or any inspection bureau having jurisdiction, or by Subscriber's own act, shall require or make necessary any changes to the System as originally installed, Subscriber agrees to pay for the cost of such changes.
  - D. It is understood and agreed that *EPS*'s obligations relates to the service of the specified System(s), and that *EPS* is in no way obligated to maintain, repair, service, operate or assure the operation of the property, system or any devices of the Subscriber or of others to which *EPS*'s Systems are attached.
  - E. The Subscriber agrees that any person or persons, unauthorized by *EPS* will not be permitted to alter, remove or tamper with Equipment mentioned herein, and will safeguard said equipment against loss and damage during the term of this agreement. The Subscriber shall not permit any device, contrivance or apparatus to be attached to the lines, wires, instruments or equipment of such System, except by the authorized agents of *EPS* without the written permission of *EPS*.
  - F. Service will be furnished by *EPS* during its normal working hours, Monday through Friday, except holidays. *EPS* shall have full and free access to the equipment to perform service thereon. *EPS* shall not be responsible for failure to render service due to causes beyond its control. Service rendered outside the normal working hours for *EPS* are not within the scope of the Service Agreement unless specifically agreed to between *EPS* and the Subscriber and so noted on this document.
  - G. Subscriber shall carefully and properly set the system at closing of the premises. Subscriber shall carefully and properly test the equipment designated on the schedule of protection, prior to each closed period and shall immediately report to *EPS* any claimed inadequacy in or failure of the System. *EPS* shall make such repairs as soon after receipt of notice as is reasonably possible.
  - H. If the System includes a sprinkler system, *EPS* shall be responsible only for the service of *EPS*'s equipment, and only for making the appropriate response to an alarm signal, if received by *EPS*. Subscriber is solely responsible for maintenance of the sprinkler system, including adequate heat, so it will at all times be in good working order. If pressure pumps are needed for proper operation of sprinkler supervisory and water flow alarms, due to fluctuation in the water pressure, such pressure pumps shall be provided by the Subscriber at Subscriber's expense.
- 3. MONITORING:**
- A. Signal receiving and notification service shall be provided by *EPS* if on the reverse side of this Agreement the Monitoring option is checked. The Subscriber agrees to furnish *EPS* a list of the names of all persons with whom *EPS* is authorized by Subscriber to communicate regarding the System and any signals received if *EPS* provides monitoring services.
  - B. **Subscriber also understands *EPS* does not receive signals when the transmission mode is or becomes non-operational and that signals from the digital communicator cannot be received if the transmission mode is cut, interfered with or otherwise damaged. Subscriber acknowledges that a cellular communication back-up device is available at an extra expense.**
  - C. In the event BURGLARY PROTECTION SERVICE is furnished under this Agreement, upon receipt of a burglar alarm signal from Subscriber's premises, *EPS*, at its sole discretion, shall attempt to first contact a designated representative at the premise. If *EPS* has not contacted a designated representative, then *EPS* may attempt to contact the first designated representative on the contact list provided by Subscriber to *EPS*. If *EPS* is unable to reach a designated representative of Subscriber, then *EPS* shall make every reasonable effort to transmit the alarm promptly to the headquarters of the municipal police department, unless there is just cause to assume that an emergency condition does not exist.
  - D. In the event FIRE ALARM SERVICE is furnished under this Agreement, *EPS* shall make every reasonable effort to transmit to the municipal fire department all fire alarm signals received at this Central Station from the Fire Alarm System.
  - E. In the event MEDICAL ALERT OR HOLD-UP/PANIC ALARM SERVICE is furnished under this Agreement, *EPS* shall, on receipt of medical alert or hold-up/panic alarm signal from the Subscriber's premises, make every reasonable effort to transmit the alarm promptly to the headquarters of the municipal police department or designated emergency service.
  - F. In the event a SUPERVISORY OR TROUBLE SIGNAL registers at *EPS*'s Central Station, *EPS* shall make every reasonable effort to notify the designated representative of Subscriber.
  - G. OPENING & CLOSING SUPERVISION shall be provided by *EPS* if, on the reverse side of this Agreement, opening and closing supervision is checked.
  - H. If ALARM RESPONSE SERVICE is available and is checked in this Agreement, on receipt of an alarm signal from Subscriber's premises, *EPS* will make a reasonable effort to send its representative, who will, only if Subscriber has provided a key in an *EPS* approved knock box located on premises, enter and make search of Subscriber's premises and is hereby authorized, as the agent of Subscriber, to cause the arrest of any person or persons found on the premises without authority to enter, and to hold or cause to be held, him or them, until released by Subscriber or Subscriber's authorized representative. In the event of interruption to the burglar alarm service, the services of *EPS* shall cease upon visual inspection of the protected premises from the inside and making of necessary emergency repairs to the burglar alarm system, where keys have been furnished in an *EPS* approved knock box. Where a knock box has not been furnished, services of *EPS* shall cease upon visual inspection of the protected premises from the outside.
- 4. CANCELLATION:**
- A. This Agreement may be terminated at the option of *EPS* at any time in the event that *EPS*'s Central Station is destroyed or so substantially damaged by fire or other catastrophe that it is impractical to continue service, or in the event that *EPS* is unable either to secure or retain the connections or privileges necessary for the transmission of signals by means of communication between the Subscriber's premises and *EPS*'s Central Station or agency and *EPS* shall not be liable for any damages or subject to any penalty as a result of such termination. In the event of such termination, *EPS* will refund to the Subscriber any advance payments made for service to be supplied subsequent to the date of such termination.
  - B. It is understood and agreed that this Agreement may be terminated by *EPS* for non-payment of any undisputed amounts and in the event that the Subscriber fails to follow any recommendations *EPS* may make for the repair or the replacement of defective parts of their system not covered under the Service Agreement or in the event that the Subscriber's failure to follow the operating instructions provided results in an undue number of false alarms or if the premises in which the system is installed are so modified or altered after installation as to render continuation of service impractical.
  - C. Subscriber may immediately terminate this Agreement in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls.
- 5. INSTALLATION:**
- A. *EPS* assumes no liability for delay in installation of the System, or interruption of service due to strikes, riots, floods, fires, acts of God or any cause beyond the control of *EPS* including interruption in telephone services. *EPS* will not be required to supply service to the Subscriber while interruption of service due to any such cause shall continue.
  - B. Any installation charge quoted in this agreement is based on *EPS* performing the installation with its own personnel, or *EPS*'s subcontractors. If for any reason this installation must be performed by outside Contractors, said installation charge shall be subject to revision.
  - C. Subscriber hereby authorizes *EPS* to make installations during regular working hours. Any variation from or alteration of the installation herein specified must be requested in writing by Subscriber and shall be paid for by Subscriber.
  - D. Subscriber shall supply or provide the necessary energy and power required to operate said System(s) at no expense to *EPS*. In the event of a power failure or other interruption at Subscriber's premises, Subscriber shall notify *EPS* immediately.
  - E. Telephone Service. Subscriber shall supply, at no charge to *EPS*, telephone hook-ups, internet access, and IP addresses as deemed necessary by *EPS*, in its sole discretion, AND TO NOTIFY *EPS* OF ANY CHANGE IN SUCH SERVICE.
  - F. Wire mold or conduit for any wiring, plenum wire, trenching for buried conduit or wiring located outside the building is not included in the agreement, unless specifically included in our proposal. If any of the preceding is required, Subscriber will agree to provide such at Subscriber's expense.
  - G. Subscriber acknowledges that *EPS* has no way of knowing of the existence of hidden pipes, wires or other obstructions within walls, and it is Subscriber's obligation to make *EPS* aware of such conditions, failing which *EPS* shall have no responsibility whatsoever for damage that may be caused.
- 6.** Any dispute arising from this Agreement must be resolved in the Michigan Court of Claims.
- 7. ASSIGNABILITY** - This Agreement is not assignable by the Subscriber without the prior written approval of *EPS* which shall not be unreasonably withheld. *EPS* may assign its interest in this Agreement to any entity which is licensed to provide the services required to be performed by *EPS*.
- 8. PARTIAL INVALIDITY** - In the event that any of the provisions of this Agreement shall be held to be invalid or unenforceable or to violate the provisions of any law, such finding shall not affect the validity or enforceability of the remaining provisions of this Agreement. In such case, the unenforceable or invalid provisions shall be deemed stricken, shall be deemed as non-material to the Agreement as a whole, and the balance of the Agreement shall be construed and enforced as if the stricken provisions were never part of the Agreement.



**Schedule Of Protection  
(SP2)**



SUBSCRIBER: DEPARTMENT OF NATURAL RESOURCES

September 12, 2017

LOCATION: 2122 S M-37 BLDG A  
TRAVERSE CITY MI 49684

TYPE OF SERVICE/SYSTEM: **Burglary**

- 1 Alarmnet Internet and GSM
- 1 Vista-128BPT Control Panel
- 1 AC Line Surge Suppressor
- 1 Interior Surface Mount Siren
- 1 6160RF - Honeywell Alpha Keypad w/receiver
- 2 Honeywell Wireless receiver
- 1 6160 - Honeywell Alpha Keypad
- 7 Honeywell Wireless Door Window Sensor
- 3 Overhead Door Contact
- 12 Wireless Glassbreak Sensor
- 4 Wireless Motion Detector
- 1 Room Temperature Sensor (Mechanical)
- 1 Honeywell Commercial Wireless Transmitter

**ENGINEERED PROTECTION SYSTEMS, INC.DT**

BY: \_\_\_\_\_  
Director of Sales

I Accept the Alarmnet IGSM cellular unit

**SUBSCRIBER:**

BY: \_\_\_\_\_  
Signature Date



# Purchase Order and Service Agreement



MEMORANDUM OF AGREEMENT made this **14th** day of **September**, **2017** by and between **ENGINEERED PROTECTION SYSTEMS, INC.**, 750 Front N.W., Suite 300, Grand Rapids, MI 49504 hereinafter referred to as **EPS** and

**DEPARTMENT OF NATURAL RESOURCES** (Legal Name)

**2122 S M-37, Bldg B, Traverse City, MI 49685** (Address) hereinafter referred to as "Subscriber."

### A. SERVICES:

That for the consideration hereinafter mentioned, **EPS** agrees to furnish Subscriber with a System ("System") as specified in the Schedule of Protection (attached form SP-2) in the premises of the Subscriber at:

**Department of Natural Resources, 2122 S M-37, Bldg B, Traverse City, MI 49685**

and will, subject to the terms and conditions hereof, during the term of this agreement provide the following services.

- 1.  Monitoring
- 2.  Internet Monitoring (if checked, see Internet Monitoring Addendum)
- 3.  Cellular Protection Plan
- 4.  Service Agreement
- 5.  Cellular Back-Up
- 6.  Alarm Response
- 7.  Quarterly Fire Testing
- 8.  Activity Reports
- 9.  Opening & Closing Supervision
- 10.  Total Connect
- 11.  Access Control Administration

### B. PAYMENTS:

1. The subscriber agrees to pay **EPS**, its agents or assigns, the sum of **Two Thousand Eight Hundred Eighty and 00/100 Dollars (\$2,880.00)** plus tax. One half to be paid upon signing of this agreement and one half to be paid upon completion of installation of the equipment to be invoiced as stated below. The Subscriber agrees to pay **EPS**, its agents or assigns, in addition, for the services provided if checked above, the sum of **Nine Hundred Eighty-Four and 00/100 (\$984.00)** Dollars per annum, plus **One Hundred Eighty and 00/100 (\$180.00)** Dollars per annum for Communication charges, and is payable in quarterly installments of **Two Hundred Ninety-One and 00/100 (\$291.00)** Dollars in advance. All undisputed invoices will be due and payable by subscriber, in accordance with subscriber's statutory payment procedure as specified in 1984 PA 279, MCL 17.51 et seq., within forty-five (45) days after receipt of **EPS** invoice. As required by MCL 18.1283a, **EPS** will electronically register with subscriber, to receive electronic fund transfer (EFT) payments.

2. In the event **EPS**'s representative is sent to the Subscriber's premise in response to a service call or signal caused by the Subscriber improperly following operating instructions or failing to close or properly secure a window, door or other protected point, there shall be a service charge to the Subscriber, which subscriber agrees to pay upon billing by **EPS**.

### C. TERM:

1. Except as otherwise herein provided, this agreement shall remain in full force and effect for a period of three (3) years from the date System becomes operative, or the date of this contract, whichever is later.

2. Title to the equipment is to remain with **EPS** until the full purchase price is paid. Failure to pay the purchase price of the installed equipment when due shall give **EPS** the right, without obligation to redecorate or repair the premises or any other liability, to repossess that equipment with or without notice, and to avail itself of any legal remedy.

### D. LIMIT OF LIABILITY

IT IS UNDERSTOOD AND AGREED BY THE PARTIES HERETO THAT **EPS** IS NOT AN INSURER AND THAT INSURANCE, IF ANY, COVERING PERSONAL INJURY AND PROPERTY LOSS OR DAMAGE ON SUBSCRIBER'S PREMISES SHALL BE OBTAINED BY THE SUBSCRIBER: THAT **EPS** IS BEING PAID FOR THE INSTALLATION, MONITORING AND SERVICE OF SYSTEM DESIGNED TO REDUCE CERTAIN RISKS OF LOSS AND THAT THE AMOUNTS BEING CHARGED BY **EPS** ARE NOT SUFFICIENT TO GUARANTEE THAT NO LOSS WILL OCCUR; THAT **EPS** IS NOT ASSUMING RESPONSIBILITY FOR ANY PERSONAL INJURY OR PROPERTY LOSS OR DAMAGE WHICH MAY OCCUR EVEN IF DUE TO NEGLIGENT PERFORMANCE BY **EPS** OR BY ANY SUBCONTRACTORS USED BY **EPS** OR FAILURE TO PERFORM ANY OF ITS OBLIGATIONS, SINCE IT IS IMPRACTICAL AND EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES WHICH MAY ARISE DUE TO THE FAULTY OPERATION OF THE SYSTEM OR FAILURE OF SERVICES PROVIDED, IF, NOT WITHSTANDING THE ABOVE PROVISIONS, THERE SHOULD ARISE ANY LIABILITY ON THE PART OF **EPS**, SUCH LIABILITY SHALL BE LIMITED TO AN AMOUNT EQUAL TO ONE-HALF (1/2) THE ANNUAL SERVICE CHARGE PROVIDED HEREIN OR \$250.00, WHICHEVER IS THE LESSER, AND THIS LIABILITY SHALL BE EXCLUSIVE. IN THE EVENT THE SUBSCRIBER WISHES THE COMPANY TO ASSUME A GREATER OR HIGHER LIMITATION OF LIABILITY, THE SUBSCRIBER MAY, AS A MATTER OF RIGHT, OBTAIN FROM THE COMPANY A HIGHER LIMIT BY PAYING AN ADDITIONAL AMOUNT PROPORTIONED TO THE INCREASE IN DAMAGES, BUT SUCH ADDITIONAL OBLIGATION SHALL IN NO WAY BE INTERPRETED TO HOLD THE COMPANY AS AN INSURER. IF THE SYSTEM INCLUDES COMPONENTS MANUFACTURED BY HONEYWELL INTERNATIONAL INC ("HONEYWELL") THE SAME LIMITATION OF LIABILITY SHALL EXIST FOR ANY CLAIM MADE BY SUBSCRIBER AGAINST HONEYWELL. SUBSCRIBER AGREES THAT ANY LEGAL ACTION FOR A CLAIM WHICH IT MAY HAVE AGAINST **EPS** ARISING OUT OF **EPS**'S PERFORMANCE OF THIS CONTRACT MUST BE FILED WITHIN ONE YEAR OF THE DATE THAT THE CLAIM AROSE (WHICH IN THE CASE OF A LOSS SUFFERED BY CUSTOMER SHALL BE THE DATE THE LOSS OCCURRED) AND FURTHER AGREES THAT A CLAIM PERIOD OF ONE YEAR IS REASONABLE.

### E. LIMITED WARRANTY:

**EPS** DOES NOT MAKE ANY REPRESENTATION OR WARRANTY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS, THAT THE SYSTEM OR SERVICE SUPPLIED MAY NOT BE COMPROMISED OR THAT THE SYSTEM OR SERVICES WILL IN ALL CASES PROVIDE THE PROTECTION FOR WHICH IT IS INTENDED. THERE ARE NO IMPLIED WARRANTIES WHATSOEVER.

### F. SUBSCRIBER'S INDEMNIFICATION

DUE TO CONSTITUTIONAL PROHIBITIONS, SUBSCRIBER WILL NOT INDEMNIFY **EPS**, OR ITS EMPLOYEES OR AFFILIATES, FOR ANY REASON WHATSOEVER. SHALL NOT APPLY TO CLAIMS FOR LOSS OR DAMAGE SOLELY AND DIRECTLY CAUSED BY AN EMPLOYEE OF **EPS** WHILE ON SUBSCRIBER'S PREMISES.

### G. SUBCONTRACTORS:

SUBSCRIBER ACKNOWLEDGES THAT THE PROVISIONS OF THIS AGREEMENT, AND PARTICULARLY THOSE PARAGRAPHS RELATING TO DISCLAIMER OF WARRANTY, AND LIMIT OF LIABILITY INURE TO THE BENEFIT OF AND ARE APPLICABLE TO ANY SUBCONTRACTORS ENGAGED BY **EPS** TO PROVIDE MONITORING, INSTALLATION OR SERVICE OF THE SYSTEM PROVIDED HEREIN, AND BIND SUBSCRIBER TO SAID SUBCONTRACTOR WITH THE SAME FORCE AND EFFECT AS THEY BIND SUBSCRIBER TO **EPS**.

### H. APPROVAL:

This Agreement shall not be effective until executed in writing by an authorized representative of **EPS**. Further, this Agreement supersedes all previous Agreements and any Riders thereto, between the parties as to the premises listed above.

### I. ENTIRE AGREEMENT

The Agreement of the parties is expressed hereinabove and in the Terms and Conditions on the reverse side and no verbal understandings or agreement shall alter, change or modify the terms and provisions of this Agreement. It is understood and agreed by and between the parties hereto, that if there is any conflict between this Agreement and Subscriber's purchase order, or any other document, this agreement will govern, whether such purchase order or other document is prior or subsequent to this Agreement.

SUBSCRIBER ACKNOWLEDGES THAT THE LIABILITY OF **EPS** IS LIMITED AS SET FORTH IN PARAGRAPHS D, E, F AND G, AND ACCEPTS THE LIMIT SET FORTH THEREIN. SUBSCRIBER ACCEPTS ALL THE PROVISIONS OF THIS AGREEMENT AND AGREES THAT THERE HAS BEEN NO RELIANCE PLACED ON ANY PROVISION NOT APPEARING HEREIN.

**ENGINEERED PROTECTION SYSTEMS, INC.**  
Michigan License # 3601202358

**DT**

**SUBSCRIBER**

BY: \_\_\_\_\_  
Director of Sales

BY: \_\_\_\_\_ Date \_\_\_\_\_

Revision 2016.1

## TERMS AND CONDITIONS

1. **SUBSCRIBER'S AUTHORIZATION** – Subscriber hereby authorizes and empowers **EPS**, its agents or assigns as follows:

- A. To install said System as described in the Schedule of Protection at said location
  - B. To enter the premises for the purpose of inspecting, testing and repairing said System
  - C. To enter the premises in answer to a signal as representative and agent of Subscriber
- 2. SERVICE AGREEMENT:**
- A. Service for the equipment supplied under this Agreement will be provided by *EPS* if on the reverse side of this Agreement, Service Agreement is checked. All ordinary expenses of service and repairs shall be borne by *EPS* but if rendered necessary by alterations or repairs to the premises, such expenses shall be borne by Subscriber. If service agreement is not included, *EPS* will, if requested, provide the Subscriber with repair and parts replacement for the equipment at *EPS*'s prevailing prices and terms at the time.
  - B. Should any part of the system be damaged by fire, water or extraneous causes, repairs shall be paid for by Subscriber.
  - C. If Subscriber's insurer, or any inspection bureau having jurisdiction, or by Subscriber's own act, shall require or make necessary any changes to the System as originally installed, Subscriber agrees to pay for the cost of such changes.
  - D. It is understood and agreed that *EPS*'s obligations relates to the service of the specified System(s), and that *EPS* is in no way obligated to maintain, repair, service, operate or assure the operation of the property, system or any devices of the Subscriber or of others to which *EPS*'s Systems are attached.
  - E. The Subscriber agrees that any person or persons, unauthorized by *EPS* will not be permitted to alter, remove or tamper with Equipment mentioned herein, and will safeguard said equipment against loss and damage during the term of this agreement. The Subscriber shall not permit any device, contrivance or apparatus to be attached to the lines, wires, instruments or equipment of such System, except by the authorized agents of *EPS* without the written permission of *EPS*.
  - F. Service will be furnished by *EPS* during its normal working hours, Monday through Friday, except holidays. *EPS* shall have full and free access to the equipment to perform service thereon. *EPS* shall not be responsible for failure to render service due to causes beyond its control. Service rendered outside the normal working hours for *EPS* are not within the scope of the Service Agreement unless specifically agreed to between *EPS* and the Subscriber and so noted on this document.
  - G. Subscriber shall carefully and properly set the system at closing of the premises. Subscriber shall carefully and properly test the equipment designated on the schedule of protection, prior to each closed period and shall immediately report to *EPS* any claimed inadequacy in or failure of the System. *EPS* shall make such repairs as soon after receipt of notice as is reasonably possible.
  - H. If the System includes a sprinkler system, *EPS* shall be responsible only for the service of *EPS*'s equipment, and only for making the appropriate response to an alarm signal, if received by *EPS*. Subscriber is solely responsible for maintenance of the sprinkler system, including adequate heat, so it will at all times be in good working order. If pressure pumps are needed for proper operation of sprinkler supervisory and water flow alarms, due to fluctuation in the water pressure, such pressure pumps shall be provided by the Subscriber at Subscriber's expense.
- 3. MONITORING:**
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  - B. **Subscriber also understands *EPS* does not receive signals when the transmission mode is or becomes non-operational and that signals from the digital communicator cannot be received if the transmission mode is cut, interfered with or otherwise damaged. Subscriber acknowledges that a cellular communication back-up device is available at an extra expense.**
  - C. In the event BURGLARY PROTECTION SERVICE is furnished under this Agreement, upon receipt of a burglar alarm signal from Subscriber's premises, *EPS*, at its sole discretion, shall attempt to first contact a designated representative at the premise. If *EPS* has not contacted a designated representative, then *EPS* may attempt to contact the first designated representative on the contact list provided by Subscriber to *EPS*. If *EPS* is unable to reach a designated representative of Subscriber, then *EPS* shall make every reasonable effort to transmit the alarm promptly to the headquarters of the municipal police department, unless there is just cause to assume that an emergency condition does not exist.
  - D. In the event FIRE ALARM SERVICE is furnished under this Agreement, *EPS* shall make every reasonable effort to transmit to the municipal fire department all fire alarm signals received at this Central Station from the Fire Alarm System.
  - E. In the event MEDICAL ALERT OR HOLD-UP/PANIC ALARM SERVICE is furnished under this Agreement, *EPS* shall, on receipt of medical alert or hold-up/panic alarm signal from the Subscriber's premises, make every reasonable effort to transmit the alarm promptly to the headquarters of the municipal police department or designated emergency service.
  - F. In the event a SUPERVISORY OR TROUBLE SIGNAL registers at *EPS*'s Central Station, *EPS* shall make every reasonable effort to notify the designated representative of Subscriber.
  - G. OPENING & CLOSING SUPERVISION shall be provided by *EPS* if, on the reverse side of this Agreement, opening and closing supervision is checked.
  - H. If ALARM RESPONSE SERVICE is available and is checked in this Agreement, on receipt of an alarm signal from Subscriber's premises, *EPS* will make a reasonable effort to send its representative, who will, only if Subscriber has provided a key in an *EPS* approved knock box located on premises, enter and make search of Subscriber's premises and is hereby authorized, as the agent of Subscriber, to cause the arrest of any person or persons found on the premises without authority to enter, and to hold or cause to be held, him or them, until released by Subscriber or Subscriber's authorized representative. In the event of interruption to the burglar alarm service, the services of *EPS* shall cease upon visual inspection of the protected premises from the inside and making of necessary emergency repairs to the burglar alarm system, where keys have been furnished in an *EPS* approved knock box. Where a knock box has not been furnished, services of *EPS* shall cease upon visual inspection of the protected premises from the outside.
- 4. CANCELLATION:**
- A. This Agreement may be terminated at the option of *EPS* at any time in the event that *EPS*'s Central Station is destroyed or so substantially damaged by fire or other catastrophe that it is impractical to continue service, or in the event that *EPS* is unable either to secure or retain the connections or privileges necessary for the transmission of signals by means of communication between the Subscriber's premises and *EPS*'s Central Station or agency and *EPS* shall not be liable for any damages or subject to any penalty as a result of such termination. In the event of such termination, *EPS* will refund to the Subscriber any advance payments made for service to be supplied subsequent to the date of such termination.
  - B. It is understood and agreed that this Agreement may be terminated by *EPS* for non-payment of any undisputed amounts and in the event that the Subscriber fails to follow any recommendations *EPS* may make for the repair or the replacement of defective parts of their system not covered under the Service Agreement or in the event that the Subscriber's failure to follow the operating instructions provided results in an undue number of false alarms or if the premises in which the system is installed are so modified or altered after installation as to render continuation of service impractical.
  - C. Subscriber may immediately terminate this Agreement in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls.
- 5. INSTALLATION:**
- A. *EPS* assumes no liability for delay in installation of the System, or interruption of service due to strikes, riots, floods, fires, acts of God or any cause beyond the control of *EPS* including interruption in telephone services. *EPS* will not be required to supply service to the Subscriber while interruption of service due to any such cause shall continue.
  - B. Any installation charge quoted in this agreement is based on *EPS* performing the installation with its own personnel, or *EPS*'s subcontractors. If for any reason this installation must be performed by outside Contractors, said installation charge shall be subject to revision.
  - C. Subscriber hereby authorizes *EPS* to make installations during regular working hours. Any variation from or alteration of the installation herein specified must be requested in writing by Subscriber and shall be paid for by Subscriber.
  - D. Subscriber shall supply or provide the necessary energy and power required to operate said System(s) at no expense to *EPS*. In the event of a power failure or other interruption at Subscriber's premises, Subscriber shall notify *EPS* immediately.
  - E. Telephone Service. Subscriber shall supply, at no charge to *EPS*, telephone hook-ups, internet access, and IP addresses as deemed necessary by *EPS*, in its sole discretion, AND TO NOTIFY *EPS* OF ANY CHANGE IN SUCH SERVICE.
  - F. Wire mold or conduit for any wiring, plenum wire, trenching for buried conduit or wiring located outside the building is not included in the agreement, unless specifically included in our proposal. If any of the preceding is required, Subscriber will agree to provide such at Subscriber's expense.
  - G. Subscriber acknowledges that *EPS* has no way of knowing of the existence of hidden pipes, wires or other obstructions within walls, and it is Subscriber's obligation to make *EPS* aware of such conditions, failing which *EPS* shall have no responsibility whatsoever for damage that may be caused.
- 6.** Any dispute arising from this Agreement must be resolved in the Michigan Court of Claims.
- 7. ASSIGNABILITY** - This Agreement is not assignable by the Subscriber without the prior written approval of *EPS* which shall not be unreasonably withheld. *EPS* may assign its interest in this Agreement to any entity which is licensed to provide the services required to be performed by *EPS*.
- 8. PARTIAL INVALIDITY** - In the event that any of the provisions of this Agreement shall be held to be invalid or unenforceable or to violate the provisions of any law, such finding shall not affect the validity or enforceability of the remaining provisions of this Agreement. In such case, the unenforceable or invalid provisions shall be deemed stricken, shall be deemed as non-material to the Agreement as a whole, and the balance of the Agreement shall be construed and enforced as if the stricken provisions were never part of the Agreement.



**Schedule Of Protection  
(SP2)**



SUBSCRIBER: DEPARTMENT OF NATURAL RESOURCES

July 24, 2017

LOCATION: 2122 S M-37 BLDG B  
TRAVERSE CITY MI 49690

TYPE OF SERVICE/SYSTEM: **Burglary**

- 1 Alarmnet Internet and GSM
- 1 Vista-128BPT Control Panel
- 1 Interior Surface Mount Siren
- 1 AC Line Surge Suppressor
- 1 6160RF - Honeywell Alpha Keypad w/receiver
- 2 Honeywell Wireless receiver
- 12 Honeywell Wireless Door Window Sensor
- 4 Overhead Door Contact
- 4 Wireless Motion Detector
- 6 Wireless Glassbreak Sensor
- 1 Room Temperature Sensor (Mechanical)
- 1 Honeywell Commercial Wireless Transmitter

I Accept the Alarmnet IGSM cellular unit

**ENGINEERED PROTECTION SYSTEMS, INC.DT**

**SUBSCRIBER:**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Director of Sales

Signature

Date



# STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Michigan State Lottery (MSL)

## NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **071B7700112**  
between  
THE STATE OF MICHIGAN  
and

<b>CONTRACTOR</b>	Engineered Protection Systems (EPS)
	Suite 200, 750 Front Ave NW
	Grand Rapids, MI 49504
	Drew Fleming
	616-459-0281
	dflemming@epssecurity.com
	4884

<b>STATE</b>	Program Manager	Miguel Contreras	MSL
		517 -335-5777	
		<a href="mailto:ContrerasM@michigan.gov">ContrerasM@michigan.gov</a>	
<b>STATE</b>	Contract Administrator	Steve Rigg	DTMB-Procurement
		517-284-7043	
		RiggS@michigan.gov	

CONTRACT SUMMARY			
<b>DESCRIPTION:</b> Intrusion Alarm and Card Access Equipment, Monitoring and Services			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
January 1, 2017	December 31, 2020	5, 1 Year	
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45			
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			
NA			
MISCELLANEOUS INFORMATION			
Effective 1/1/2017 this Contract is established to secure the services of a qualified Contractor to maintain and monitor the existing security systems incorporated at the various MSL offices located throughout Michigan. In addition, the Contractor may be required to furnish and install new equipment due to systems upgrades, replacement of obsolete or defective equipment, and/or expansion of security systems. This Contract is subject to the attached scope, pricing, terms and conditions.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$102,312.00

**FOR THE CONTRACTOR:**

**Engineered Protection Systems Inc**

\_\_\_\_\_  
**Company Name**

\_\_\_\_\_  
**Authorized Agent Signature**

**Kevin Carlson - President**

\_\_\_\_\_  
**Authorized Agent** (Print or Type)

\_\_\_\_\_  
**Date**

**FOR THE STATE:**

\_\_\_\_\_  
**Signature**

**Jarod Ambrosier, Buyer Manager, Commodities Division**

\_\_\_\_\_  
**Name & Title**

**DTMB Procurement**

\_\_\_\_\_  
**Agency**

\_\_\_\_\_  
**Date**



## **Schedule A – Statement of Work (SOW)**

### **1.000 Project Identification**

#### **1.001 PROJECT REQUEST**

This Contract is established for purchase and maintenance of a comprehensive security system for the Michigan State Lottery (MSL), including card access control, video system monitoring and recording, intrusion detection and intrusion monitoring and notification, and maintenance of such components and systems.

1. *Commercial off the Shelf (COTS) solution.*

The purpose of this project is to implement and customize a COTS software package. Data conversion, migration, training, maintenance and support are included in the project. Services for future enhancements will also be included.

The SOM will consider and evaluate solution evaluated by a Bidder in the following category: MSL hosted commercial off the shelf (COTS) solution.

#### **1.002 BACKGROUND**

##### Michigan State Lottery (MSL)

The MSL is a major revenue producer for the State of Michigan with the main office located in Lansing, Michigan and several locations statewide. MSL's statutory mandate is to maximize net revenues for the State consistent with the general welfare of the people. All MSL proceeds support public education in Michigan.

1. MISSION STATEMENT - MSL supports public education by providing fun and entertaining games of choice. It is MSL's goal to maximize net revenues to supplement state education programs and to operate all games and bureau functions with nothing less than total integrity.

More background information on the MSL can be found at [www.michiganlottery.com](http://www.michiganlottery.com).

2. The MSL, through Contracted services, currently maintains and monitors security/intrusion alarm systems at seven (7) facilities throughout the State of Michigan. Locations are as follows:

MSL Central Office	101 E. Hillsdale St., Lansing, MI
Region 1 Office	3060 W. Grand Blvd., Detroit, MI
Region 2 Office	3391-B Plainfield, Grand Rapids, MI
Region 7 Office	33231 Plymouth Rd., Livonia, MI
Region 8 Office	34700 Dequindre, Sterling Heights, MI
TV4 (Detroit)	550 W. Lafayette Blvd., Detroit, MI
Metro Processing Rooms	2588 World Gateway Place, Room A-692, Detroit MI
	601 Rogell Dr., Ste. 1425, Detroit, MI

The existing security system incorporates card access, intrusion detection and alarm monitoring, remote door releases, and video system monitoring with varying configurations at each address. Schedule A, Attachment 1 lists the detailed requirements.

### **1.100 Scope of Work and Deliverables**

#### **1.101 IN SCOPE**

Contractor must maintain and monitor the existing security systems incorporated at the various MSL offices located throughout Michigan. In addition, the Contractor may be required to furnish and install new equipment



due to systems upgrades, replacement of obsolete or defective equipment, and/or expansion of security systems.

## 1.102 ENVIRONMENT

### B. Current MSL Security Environment

The current security environment is included as **Appendix A - Current Security Hardware and Software Environment**.

## 1.103 WORK AND DELIVERABLES

Contractor must:

- Provide continuous intrusion alarm monitoring services for all designated facilities
- Provide maintenance and repair service for all systems in all designated facilities
- Install new security systems equipment as needed
- Remove security systems equipment as needed
- Relocate security system equipment as needed
- Train MSL staff in the operation of all security systems
- Inform the MSL of new technology pertaining to security systems
- Provide programming of all equipment

The Contractor must be able to provide various reports, when requested by the MSL. Examples include itemized report of total items (commodities and services) purchased by the MSL, open invoice reports, delivery compliance reports, quantity reports, service compliance reports, etc.

The Contract must insure that the security systems are capable of generating the following reports:

- Reports of card key use, whether successful or denied
- Building opening and closing reports
- Alarm event reports
- Various card key usage reports
- Access level reports
- Time zone reports

### A. Business Requirements

The Contractor will utilize existing equipment. Any new or replacement equipment must be fully compatible with existing equipment. All new or replacement components, parts, or equipment must meet or exceed the specifications of existing equipment.

Any replacement of existing equipment and systems with alternate security systems proposed over time must meet the following conditions are:

- The new security systems, at no cost, becomes the property of the MSL.
- The new security systems must meet or exceed the specifications of the existing systems.
- The replacement of the existing security systems with new security systems must not cause an interruption in security coverage for the listed MSL facilities.

The MSL will be responsible for the cost of installation and monthly service charges for all communication lines necessary to connect all facilities to the remote monitoring locations and to connect all regional facilities to the central controller.

### Deliverable(s)



- Project Schedule.
- Final DTMB -0170 Security Assessment documentation.
- MSL IT Vulnerability Assessment/Penetration Test.

**Acceptance Criteria**

- High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.
- Requirement Deliverables meet the requirements detailed in **Schedule A, Attachment 1 – Requirements.**

**B. Hardware**

Where re-use of the current MSL security hardware such as video cameras, card readers and door strikes is not possible, the Contractor must provide a security hardware solution that satisfies the requirements as outlined in Schedule A, Attachment 1.

**Deliverable(s)**

Hardware provided to meet all requirements detailed in **Schedule A, Attachment 1.**

**Acceptance Criteria**

- High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.
- Hardware meets the requirements detailed in **Schedule A, Attachment 1 – Requirements.**

**C. Software**

The Contractor will provide a software solution that satisfies the requirements as outlined in **Schedule A, Attachment 1.**

**Deliverable(s)**

Software provided meeting all requirements detailed in **Schedule A, Attachment 1.**

**Acceptance Criteria**

- High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.
- Software meets the requirements detailed in **Schedule A, Attachment 1 – Requirements.**

**D. Application Design**

Must meet requirements in **Schedule A, Attachment 1.**

**Deliverable(s)**

Application design document meeting all requirements detailed in **Schedule A, Attachment 1.**

**Acceptance Criteria**

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.



## **E. Application Development**

Needs to meet requirements in **Schedule A, Attachment 1**.

### **Deliverable(s)**

Application development meeting all requirements detailed in **Schedule A, Attachment 1**.

### **Acceptance Criteria**

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.

Quality Assurance Program(s).

All devices and equipment supplied by the Contractor under the contract must be approved for their intended use by Underwriters Laboratories and other generally recognized industry standards. All wiring must be similarly approved under appropriate industry standards. In addition, the Contractor must be a manufacturer authorized installer of existing security system equipment utilized by the MSL.

The Contractor shall be responsible for obtaining any and all permits and/or approvals of local authorities required to perform installation work when required. The cost of such permits and/or approvals must be included in the costs outlined in Schedule B, Pricing.

## **F. Implementation**

Contractor will continue to service, monitor and test the existing Lottery EPS intrusion, fire, access control and video surveillance systems.

### **1. Installation (for any new locations, if applicable)**

For any new location, Contractor will install (if applicable), configure, integrate, and test the solution in cooperation with the State's designated employees on-site and/or contractors to ensure the complete and successful implementation of the security system. All security system installations will be performed by qualified personnel.

The installation of all aspects of the security system must be done with the following considerations:

1. Contractor will install components that require construction related work to any MSL location in a manner that does not damage the location or existing equipment and infrastructure.
2. Contractor will leave all MSL locations clean as a result of construction related installation activities.
3. Contractor will perform all installation activities in a manner that avoids interruption to the MSL day to day business.
4. Contractor may be required to interface with MSL personnel during installation of security hardware and computing hardware.

### **2. Configuration**

Contractor will perform and or assist in configuring any new locations. Contractor will provide system configuration documentation to MSL as is necessary for self-configuration options. The new location will not be considered implemented until sufficient configuration has been completed in order to meet the requirements detailed in Schedule A, Attachment 1.



### 3. System Testing

System testing for any new location must include a regression testing that includes all previously implemented MSL locations.

### 4. User Acceptance Testing

Contractor will be responsible for performing user acceptance testing for any new equipment or components.

#### Acceptance Criteria

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.

### G. Training

The Contractor must provide the following training: training upon installation of any new hardware & software to users at no extra charge to MSL.

#### Deliverable(s)

- Train the trainer
- End user training.
- Technical for State individuals who will be working with the services contractor to configure the applications including establishing databases and interfaces, data conversion, customization, and upgrading the customized software.
- System administration training for State personnel who will be responsible for ongoing maintenance and administration of the system, including security

Upgrades and new versions to the system that affect end-user functionality include training at no additional cost (e.g. classroom or online training, training flier, release features, etc.)

Training is provided in a variety of formats for product installation, use, and administration for a variety of levels (e.g. basic, advanced, refresher, etc.)

All training manuals, training plans and other documentation provided become the property of the State.

#### Acceptance Criteria

- High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.
- State-identified end users are proficient in the use of the solution.
- State-identified system administrators are proficient in the administration and configuration of the solution.
- State-identified DTMB technical staff are knowledgeable in the maintenance and support of the solution.

### H. Documentation

Contractor will provide a complete set of security system documentation to the State including the Deliverables listed below:

#### Deliverable(s)



1. A minimum of two (2) copies of the following documentation in an electronic format, online and in hard copy will be provided:
  - a. User and Technical Manuals - On-line and Hard Copy
  - b. Operations Manual
  - d. All updates of documentation during the term of the Contract, software license and maintenance agreement
2. The following documentation is provided for all modules and program development:
  - a. System-wide documentation and specifications
  - b. Baseline End-User training manuals to be used as a basis for "User Manuals" and online help
  - c. Installation procedure
  - d. Module configuration documents sufficient for configuration maintenance purposes
  - e. Testing scripts
  - f. Specification documentation
  - g. Production migration
3. The documentation of components, features, and use of the hardware/software must be detailed such that resolution of most problems can be determined from the documentation, and most questions can be answered.
4. All system, operational, user, change, and issue documentation must be available in electronic format, published to an intranet website, accessible to State users, updated regularly, with unique numerical identifiers for each section and be consistent with the most current version of the application(s) and three (3) previous versions.
5. All system, operations, user, change and issue documentation is to be organized in a format, which is approved by the State and facilitates updating and allows for revisions to the documentation to be clearly identified including the three (3) previous versions.
6. The Contractor must develop and submit for State approval complete, accurate, and timely system, operations, and user documentation.
7. The Contractor must notify the State of any discrepancies or errors outlined in the system, operations, and user documentation.

### Acceptance Criteria

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.

## I. Operation Services

### Deliverable(s)

- Hosting
- Systems management
- Disaster recovery
- Security administration services
- Storage services
- Remote management with hardware at a State site
  - Leased or owned by the State
  - Owned by the Contractor
- On-site management with hardware at a State site
  - Leased or owned by the State
  - Owned by the Contractor
- Management with hardware at the Contractor's site
- Leased or owned by the State
- Owned by the Contractor and dedicated to the State



- Owned by the Contractor and utilized by the State on a metered usage basis.

### Acceptance Criteria

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.

### J. Maintenance and Support

The Contractor must perform maintenance and repairs to the system so as to keep it in good operating order to the satisfaction of the MSL. Repairs and maintenance must be performed during normal business hours of the MSL unless the MSL requests otherwise or prior arrangements are made between the Contractor and the MSL. The Contractor must be a factory authorized dealer of equipment installed in MSL facilities. Contractor staff, who will work on the MSL security system, must be manufacturer trained and certified.

The Contractor must respond to MSL requests for repair services caused or necessitated by system malfunction that, if not repaired, could result in a security breach. Such Contractor response must be within four (4) hours for all MSL facilities. The Contractor must respond to requests for other, non-critical, repair services within twenty-four (24) hours of the request. The Contractor must maintain a sufficient equipment inventory to insure the prompt repair of the MSL security systems.

### SYSTEM MONITORING SERVICES

The alarm controls and communication devices installed in each MSL facility must be capable of communicating necessary information to the Contractor's central monitoring station which must be located in Michigan. The Contractor must not sub-contract the central monitoring station or personnel. The Contractor must staff the central monitoring station twenty-four (24) hours per day seven (7) days per week. There must be no interruption in monitoring services. The station must be Underwriters Laboratories listed and Factory Mutual Approved. In addition, a CSAA certification of the central monitoring station is preferred.

The MSL and the Contractor must mutually agree to a listing of police agencies to be contacted by the Contractor in the event of an alarm condition for each of the monitored MSL facilities. In addition, the MSL will provide, to the Contractor, a list of MSL personnel to be contacted in the event of an alarm condition occurring at each monitored facility.

The Contractor must initiate an appropriate response to an alarm condition within three (3) minutes of its occurrence.

### Deliverable(s)

Maintenance of the entire security system.

Support – see description above in Section J.

- Maintenance of hardware
- Existing hardware
- Purchased hardware
- Maintenance of software
  - Existing software
  - Purchased software
- Support
  - Technical
    - a. Maintenance programs commence at the end of the warranty period.
    - b. All maintenance is performed by qualified personnel familiar with the hardware.
    - c. Remote diagnostic capabilities are provided.
    - d. Maintenance is available on an annually renewable contract.



- e. The software maintenance program includes all future software updates and system enhancements applicable to system modules licensed without further charge to all licensed users maintaining an annually renewable software support contract.
- f. Call Center support is available 24 x 7 x 365, with escalation as necessary to senior technical/engineering staff, and then to higher management and/or senior management.
- g. Maintenance service options are provided including 24 x 7 x 365 service, onsite service, 2- (emergency), 4-, and 8-hour and next day response times.
- h. Calls for service will be returned within 2 hours.
- i. Guaranteed parts availability within the service response window at all times.
- j. Emergency assistance is available 24 hours a day, seven days a week, at no additional cost to the State.
- k. The State will be provided with information on software problems encountered at other locations, along with the solution to those problems, when such information is relevant to State software.
- l. Support is provided for superseded releases and back releases still in use by the State.
- m. For the first year and all subsequent Contract years, the following services are provided for the current version and one previous version of any Software provided with the deliverables, commencing upon installation of the deliverables or delivery of the Software:
  - 1. **Error Correction.** Upon notice by State of a problem with the Software (which problem can be verified), reasonable efforts to correct or provide a working solution for the problem.
  - 2. **Material Defects.** The State will be notified of any material errors or defects in the deliverables known, or made known to Contractor from any source during the Contract term that could cause the production of inaccurate, or otherwise materially incorrect, results and must initiate actions as may be commercially necessary or proper to effect corrections of any such errors or defects.
  - 3. **Updates.** All new releases and bug fixes (collectively referred to as “Changes”) for any software deliverable developed or published by Contractor and made generally available to its other customers at no additional charge will be provided to the State at no additional charge.

**Acceptance Criteria**

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.

**K. Knowledge Transfer/Transition**

The Contractor will provide training as needed per MSL’s discretion to transfer knowledge of the security system to MSL. Trainings must be conducted in person and onsite at an MSL office location of MSL’s choosing.

**Deliverable(s)**

- Training plan
- User training
- Technical Training
- New User Training
- Optional Additional Training
- Ongoing Free New Release/Upgrade Training

**Acceptance Criteria**

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 1.501.



## I. Future Enhancements

Upon request and at the State's sole option, Contractor will provide additional services related to scope changes, enhancements, training or legislative mandates identified in the future. Contractor will ensure that technical resources are available to address this requirement. To use any portion of the Future Enhancements funding, the State will submit a Statement of Work (SOW) to the Contractor for the additional services requested. For each such SOW received from the State, the Contractor will provide a Written Proposal, including a project plan and a monthly maintenance and monitoring quote. Upon review and written approval of the Written Proposal by the MSL project manager, the MSL will submit a contract change request to DTMB-Procurement in accordance with **Section 1.403 Change Management**. Upon review and written approval by DTMB-Procurement, a contract amendment (Change Notice) will be executed. A fully executed Change Notice is required prior to issuance of any Purchase Order. An issued Purchase Order is required prior to Contractor providing any goods or services under this section. Contractor will provide such services in a manner that meets State requirements. Contractor will support testing to ensure the as-built enhancements perform as specified by the State.

### Deliverable(s)

- Written Proposal including project plan and quote.
- Services upon the State's request.
- Structured walkthroughs are required for each project Deliverable (SEM-0187).
- Signoff via the Stage Exit Process (SEM-0189).

### Acceptance Criteria

- High-level acceptance criteria per **Section 1.501. Services conforming to Statement of Work and Written Proposal)**

### 1.200 Roles and Responsibilities

#### 1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

##### Contractor Staff

###### **Contractor Representative**

The Contractor must appoint one Product Representative, specifically assigned to MSL accounts, that will respond to MSL inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. (the "Contractor Representative").

###### **Product Representative - Drew Flemming**

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

###### **Key Personnel**

The Contractor must appoint one individual (service technician) who will be directly responsible for the day to day operations of the Contract ("Key Personnel"). Key Personnel must be specifically assigned to the MSL account, be knowledgeable on the contractual requirements and security system/equipment, and respond to MSL inquires within 4 hours.



## **Contractor Technical Specialist - Monte MacFarlane**

The Contractor may not remove or assign Key Personnel without the prior consent of the MSL. Prior consent is not required for reassignment for reasons beyond the Contractor's control, including illness, disability, death, leave of absence, personal emergency circumstances, resignation, or termination for cause. The MSL may request a résumé and may conduct an interview and MSL may perform a criminal background check, at the expense of the Contractor, before approving a change. The MSL may require a 30 calendar day training period for replacement personnel.

### **Non-Key Personnel**

The Contractor must notify the Contract Administrator at least 10 calendar days before removing or assigning non-key personnel. MSL reserves the right to perform a criminal background check on the individuals at the expense of the Contractor.

**Specific EPS technicians, installers and service personnel are currently cleared to work at all Bureau of State Lottery sites.**

### **Customer Service Toll-Free Number**

The Contractor must specify its toll-free number for the MSL to make contact with the Contractor Representative. The Contractor Representative must be available for calls 24/7 for monitoring servicing.

**Toll Free (800) 966-9199**

### **Technical Support, Repairs and Maintenance**

The Contractor must specify its toll-free number for the MSL to make contact with the Contractor for technical support, repairs and maintenance. The Contractor must be available for calls 24/7.

### **Disclosure of Sub-Contractors**

No Subcontractors will be used for this Contract.

### **Security**

The Contractor will be subject to the following security procedures:

The Contractor must explain any additional security measures in place to ensure the security of MSL facilities. The bidder's staff may be required to make deliveries to or enter MSL facilities. The bidder must: (a) explain how it intends to ensure the security of MSL facilities, (b) whether it uses uniforms and ID badges. The MSL reserves the right to perform background checks on Contractor's personnel at the expense of the Contractor.

## **A. On Site Work Requirements**

### **1. Location of Work**

The work is to be performed, completed, and managed at the following locations:

1. MSL Central Office 101 E. Hillsdale St., Lansing, MI
2. Region 1 Office 3060 W. Grand Blvd., Detroit, MI
3. Region 2 Office 3391-B Plainfield, Grand Rapids, MI
4. Region 7 Office 33231 Plymouth Rd., Livonia, MI
5. Region 8 Office 34700 Dequindre, Sterling Heights, MI
6. TV4 (Detroit) 550 W. Lafayette Blvd., Detroit, MI
7. Metro Processing Rooms 2588 World Gateway Place, Room A-692, Detroit MI
  - a. 601 Rogell Dr., Ste. 1425, Detroit, MI

**2. Hours of Operation:**

- a. Normal State working hours are 7:45 a.m. to 4:45 p.m. EST, Monday through Friday, with work performed as necessary after those hours to meet project deadlines. No overtime will be authorized or paid.
- b. The State is not obligated to provide State management of assigned work outside of normal State working hours. The State reserves the right to modify the work hours in the best interest of the project.
- c. Contractor must observe the same standard holidays as State employees. The State does not compensate for holiday pay.

**3. Travel:**

- a. No travel or expenses will be reimbursed. This includes travel costs related to training provided to the State by Contractor.
- b. Travel time will not be reimbursed.

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

**1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES**

The MSL Security Director will provide the vision for the security system design and how the security system shall provide for that vision. The Security Director must be available on an as needed basis.

**MSL Security Director – Miguel Contreras****MSL Security Staff**

MSL Security staff will provide assistance to the MSL Security Director with resolution of system issues and maintenance.

**1.203 OTHER ROLES AND RESPONSIBILITIES**

The State may provide other MSL or DTMB staff, which may include:

- System Administrators: grant and deny access to servers.
- Network Administrators: assign network login credentials to Contractor.
- Infrastructure Services: assist in system implementation.
- Systems Security Administrator: responsible for systems security environment.
- IT Business Analyst.

**1.300 Project Plan****1.301 PROJECT PLAN MANAGEMENT****Performance Review Meetings**

The State will require the Contractor to attend monthly meetings, at a minimum, to review the Contractor's performance under the Contract. The meetings will be held in (Lansing, Michigan, or by teleconference, as



mutually agreed by the State and the Contractor. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

### **Project Control**

The Contractor will carry out this project under the direction and control of (MSL).

### **1.302 REPORTS**

See Schedule A, Attachment 1.

### **1.400 Project Management**

#### **1.401 ISSUE MANAGEMENT**

An issue is an identified event that if not addressed may affect schedule, scope, quality, or budget.

All issues will be reported directly to the MSL Security Director.

The Contractor must maintain an issue log for issues relating to the provision of services under this Contract. The issue management log must be communicated to the MSL Security Director on an agreed upon schedule, with email notifications and updates. The issue log must be updated and must contain the following minimum elements:

- Description of issue.
- Issue identification date.
- Responsibility for resolving issue.
- Priority for issue resolution (to be mutually agreed upon by the MSL Security Director and the Contractor).
- Resources assigned responsibility for resolution.
- Resolution date.
- Resolution description.

The Contractor must also maintain a defects log for software defects identified by the MSL Security Director. As used in this section, a defect is defined as a "shortcoming, imperfection, flaw, deviation or inadequacy of the system to meet the requirements approved by both the Contractor and MSL for this project as specified in the (a) Statement of Work of this RFP, (b) **Attachment 1 – Requirements** of this RFP, or (c) any Project Change Control Requests." In short, a defect is something that does not work as designed and the Contractor is responsible for fixing free of charge. The defects log must be communicated to the MSL Security Director on an agreed upon schedule, with email notifications and updates. The defects log must be updated and must contain the following minimum elements:

- Description of each defect.
- Defect identification date.
- Priority for fixing defects (to be mutually agreed upon by the MSL Security Director and the Contractor).
- Contractor resources assigned responsibility for fixing each defect.
- Estimated date for fixing each defect.
- Description of the fix to be applied.

#### **1.402 RISK MANAGEMENT**

A risk is an unknown circumstance or event that, if it occurs, may have a positive or negative impact on the project.



The Contractor is responsible for establishing a risk management plan and process, including the identification and recording of risk items, prioritization of risks, definition of mitigation strategies, monitoring of risk items, and periodic risk assessment reviews with the MSL.

A risk management plan format must be submitted to the State for approval within twenty (20) business days after the effective date of the contract resulting from the upcoming RFP. The risk management plan will be developed during the initial planning phase of the project, and be in accordance with the MSL or State's PMM methodology. Once both parties have agreed to the format of the plan, it must become the standard to follow for the duration of the contract. The plan must be updated bi-weekly, or as agreed upon.

The Contractor must provide the tool to track risks. The Contractor will work with the State and allow input into the prioritization of risks.

The Contractor is responsible for identification of risks for each phase of the project. Mitigating and/or eliminating assigned risks will be the responsibility of the Contractor. The MSL will assume the same responsibility for risks assigned to them.

### **1.403 CHANGE MANAGEMENT**

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

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

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

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

### **1.500 Acceptance**

#### **1.501 CRITERIA**

Must meet the requirements as described in Schedule A, Attachment 1.

#### **Document Deliverables**

- Document Deliverables are dated and in electronic editable format, compatible with State of Michigan software.
- A document Deliverable is not considered "Accepted" until there is a signature from the Project Owner/Sponsor on the document Deliverable (See Section 1.202 for the Project Owner/Sponsor).

#### **Hardware and Software Deliverables**

- Deliverable approval process detailed in the Contract Terms has been followed and met.



## **1.502 FINAL ACCEPTANCE**

Final acceptance is expressly conditioned upon completion of ALL Deliverables/milestones identified in Section 1.103 Work and Deliverables, completion of ALL tasks, completion of ALL applicable inspection and/or testing procedures, and the certification by the State that the Contractor has met the defined requirements. Final acceptance will be given after the expiration of the Warranty Period if all outstanding issues have been resolved to the State's satisfaction. See also the Contract Terms for further details.

## **1.600 Compensation and Payment**

### **1.601 COMPENSATION AND PAYMENT**

See Pricing, Schedule B

#### **Method of Payment**

The project will be paid by EFT. The Costs Table(s) attached must be used as the format for submitting pricing information.

#### **Travel**

The State will not pay for any travel expenses, including hotel, mileage, meals, parking, etc. Travel time will not be reimbursed.

#### **Most Favored Pricing**

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

#### **Statements of Work and Issuance of Purchase Orders**

- Unless otherwise agreed by the parties, each Statement of Work for new systems and/or services will include:
  1. Background
  2. Project Objective
  3. Scope of Work
  4. Deliverables
  5. Acceptance Criteria
  6. Project Control and Reports
  7. Specific Department Standards
  8. Payment Schedule
  9. Project Contacts
  10. Agency Responsibilities and Assumptions
  11. Location of Where the Work is to be performed
  12. Expected Contractor Work Hours and Conditions
- The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. Contractor must not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract. Contractor must perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.



## Invoicing

Contractor will submit properly itemized invoices to

Michigan Lottery  
Accounts Payable  
P.O. Box 30023  
Lansing, MI 48909

. Invoices must provide and itemize, as applicable:

- Contract number;
- Purchase Order number
- Contractor name, address, phone number, and Federal Tax Identification Number;
- Description of any commodities/hardware, including quantity ordered;
- Date(s) of delivery and/or date(s) of installation and set up;
- Price for each item, or Contractor's list price for each item and applicable discounts;
- Maintenance charges;
- Net invoice price for each item;
- Shipping costs;
- Other applicable charges;
- Total invoice price; and
- Payment terms, including any available prompt payment discount.

The State may pay maintenance and support charges on a monthly basis, in arrears. Payment of maintenance service/support of less than one (1) month's duration must be prorated at 1/30th of the basic monthly maintenance charges for each calendar day.

Incorrect or incomplete invoices will be returned to Contractor for correction and reissue.



**Schedule A, Attachment 1 – Requirements**

The Michigan State Lottery’s (MSL) security system requirements are to provide building access controls, camera monitoring and recording and intrusion detection, monitoring and notification of specified MSL office locations in support of and or replacement (fully or partial) of the current MSL security system. The Contractor will continue to use the current inventory of security hardware and software.

**Objectives**

- Provide continuous intrusion alarm monitoring services for all designated facilities.
- Provide maintenance and repair service for all systems in all designated facilities.
- Install new security systems equipment as needed.
- Relocate security systems equipment as needed.
- Train MSL staff in the operation of all security systems.
- Inform the MSL of new technology pertaining to security systems.
- Provide programming of all equipment.

More specific requirements, while not all inclusive, are listed below:

Contractor must provide deliverables, services and staff, and otherwise do all things necessary or incidental to provide the functionality required for the State’s business operations, in accordance with the requirements as set forth below.

- For each requirement with which the solution will fully comply, the Contractor is to check the column labeled “**YES**”.
- For each requirement that their proposed solution will not comply fully with all aspects of the requirement the Contractor is to check the box in Schedule A, Attachment 1 labeled “**NO**”. The Contractor may describe the impact not meeting the requirement within the “Comments” box.

**Access Controls**

The Contractor security system solution will provide access controls for all 7 of the MSL office locations. The access controls will do, but not limited to, the following:

#	REQUIREMENT	YES
1	Allow the MSL to control the physical access to MSL office locations by door, location, and by user.	X
2	Allow the MSL to add, delete and modify the physical access to MSL office locations.	X
3	Provide audit trail in an exportable format (such as Microsoft Word, Adobe PDF or Microsoft Excel) of all security changes made through the security software, for example: what the change was, the user and date / time of the change.	X
4	Allow the MSL to set physical access to MSL office locations by user, for a given door, for a given time period.	X
5	Allow the MSL to create access cards for physical access.	X



6	Electronically store the history of physical access to MSL office locations.	X
7	Allow the MSL to report on physical access history for a given date range, from one to many employees, etc. All reports will be in an exportable format, such as Microsoft Word, Adobe PDF, Microsoft Excel or a csv file.	X
8	Store physical access history for a minimum of 90 days.	X
9	Operate without interruption.	X

Video Recording

The Contractor security system solution will provide video recording for all 4 of the MSL office locations. The video recording system will do, but is not limited to, the following:

#	REQUIREMENT	YES
1	Allow the MSL to video record the physical access to MSL office locations.	X
2	Allow the MSL to video record other specified areas of MSL office locations.	X
3	Allow the MSL to access all video recordings from a MSL office.	X
4	Store video recordings for a minimum of 45 days.	X
5	Operate without interruption.	X

Intrusion Detection and Monitoring

The Contractor security system solution will provide intrusion detection, monitoring and notification by the Contractor for MSL specified locations 24/7/365.

#	REQUIREMENT	YE
1	Contractor's central monitoring station is located in Michigan.	X
2	Contractor does not sub-contract the central monitoring station or personnel.	X
3	Contractor's central monitoring station is Underwriters Laboratories listed and Factory Mutual Approved.	X
4	Contractor's central monitoring station is CSAA certified.	X
5	Allow the MSL to set guidelines regarding alarm response protocols.	X
6	Provide alarm reports to designated MSL Security personnel.	X



7	Store video recordings for a minimum of 45 days.	X
8	Operate without interruption.	X



## Appendix A Lottery – Current Security Hardware and Software Environment

All facilities, with the exception of the WDIV TV4 studio and the Detroit Metro processing rooms, have card access control and intrusion alarm/monitoring systems. The WDIV studio and Detroit Metro processing rooms have video recording equipment only.

### Card Access System

The card access system uses proximity card reader technology and is controlled via a DSX Security Management System. The central control is located in the Lansing office with modem connections to the regional offices. The card access systems are operated through a central controller and permit the utilization of multiple time zone and access level parameters to control and monitor ingress and egress to zone controlled areas. Communication is via a dial up modem. The card access system has the following features:

- Control and maintenance of 10,000 employee card access files
- 64 card reader/terminal capacity expandable to 128
- 256 different access privilege levels for cardholder classifications
- 64 user definable time zones specifying when access to each area of facility be granted to each cardholder or cardholder group.
- Programmable activation of specific events including modifying cardholder or terminal parameters via the central control station.
- The ability to locate a specific cardholder by tracing a card in the system or displaying the last door used by the individual.
- The ability to program the system to prevent re-use of a specified card at a designated location at a specified time.
- The ability to utilize modems and terminal expanders for the extension of the central controller's capacity to remote locations for the purpose of controlling and recording access.
- Terminal operation and card verification while the system is operating "off-line".
- Various report options allowing the retrieval of selective information based on designated criteria for date, time, terminal number, card number, etc.
- Main memory capacity of 512 Kb.
- Programming and operating capabilities controlled by multi-level password access.
- Incorporation of relay shunt timers and egress actuators to facilitate authorized employee ingress and egress.

Equipment Manufacturer: DSX

Inventory of Card Reader Access points for each Lottery facility are as follows:

Lansing Office:	43 Card Reader Access Points
Detroit Region 1 Office:	1 Card Reader Access Point
Grand Rapids Region 2 Office:	4 Card Reader Access Points
Livonia Region 7 Office:	2 Card Reader Access Points
Sterling Heights Region 8 Office:	1 Card Reader Access Point

### Intrusion Detection System

Intrusion detection systems are operated at all office locations. This system provides for perimeter building protection through magnetic door contacts and glass breakage sensors. Interior intrusion detection is provided through magnetic door contacts as well as motion sensors. The intrusion detection systems are zoned within the buildings and are locally armed and disarmed via digital arming stations. The arming stations incorporate LED readouts and audio signaling. The arming stations are locally programmable. The intrusion detection systems are monitored twenty-four (24) hours a day, seven (7) days a week at the Contractor's central control station. The system has the following features:





Closed Circuit Video System

The current security system provides for the closed circuit monitoring and digital recording of exterior and interior areas of the Lansing Lottery facility as well as Lottery studio located at WDIV TV4 in Detroit. The video system consists of cameras, monitors, switches, splitters, and recorders. Each camera is monitored and recorded. All cameras provide 24 hour per day / 7 day per week monitoring and recording.

The following is an inventory of video equipment presently utilized by the Lottery:

- Lottery Central:                    29 cameras, indoor/outdoor IP and analog  
     1 4-TB recorder (Windows-based)  
     Power supply units
  
- WDIV TV4:                            6 indoor color cameras  
     1 20" color monitor  
     1 recording unit – Exacqvision (Linux-based)
  
- Detroit Metro Airport McNamara:    2 cameras w/NVR Exacqvision  
     1 2-TB recorder
  
- Detroit Metro Airport North:        2 cameras w/NVR Exacqvision  
     1 2-TB recorder
  
- Livonia Region 7 Office:            4 cameras w/NVR Exacqvision  
     1 4-TB recorder
  
- Grand Rapids Region 2 Office:      5 cameras w/NVR Exacqvision  
     1 4-TB recorder
  
- Equipment Manufacturer:    VICON / AURORACORD

Motion Detectors

Motion detectors are installed in each of the Lottery facilities. Two detectors are installed in the Lansing facility and one motion detector is installed in all other Lottery facilities.

Remote Door Release

Remote release buttons for unlocking specified doors are installed on 4 doors at the main Lottery office in Lansing.

Emergency “Panic” Buttons

Emergency panic/holdup buttons are installed in each Lottery office located throughout the state. Activation of the button sends an immediate trouble signal to the Contractor control station. Upon activation, the Contractor immediately calls local police to report emergency and request response to the office.



**Schedule B – Cost Tables**

- Price proposals includes all costs, including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State (e.g., shipping and handling, per piece pricing, and palletizing).
- The Contractor is encouraged to offer quick payment terms. The number of days must not include processing time for payment to be received by the Contractor's financial institution.

Quick payment terms:   0   % discount off invoice if paid within \_\_\_\_\_ days after receipt of invoice.

- Tax will be excluded from price. Sales Tax will be excluded for purchases made directly by the State, the State is exempt from State and Local Sales Tax. Prices must not include the taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

**4. CONTRACTOR ASSUMPTIONS:**

EPS will continue to provide service, monitoring and testing of all existing Lottery EPS provided and installed access control/ security/fire and video surveillance systems throughout the state.

**5. Pricing for Monthly Fee for Systems Monitoring Services**

Lansing Central Facility	\$ 28.00	X 36 months
Detroit Region 1 Facility	\$ 56.00	X 36 months
Grand Rapids Region 2 Facility	\$ 28.00	X 36 months
Livonia Region 7 Facility	\$ 43.00	X 36 months
Sterling Heights Region 8 Facility	\$ 28.00	X 36 months
WDIV TV4, Detroit	\$ n/a	X 36 months
Detroit Metro Processing Rooms	\$ n/a	X 36 months
<b>Total Cost for Monthly Systems Monitoring Services</b>	<b>\$ 183.00</b>	<b>X 36 months = \$6,588.00</b>

**6. Pricing for Monthly Fee for Systems Maintenance Services**

Note: Labor, travel, and necessary replacement parts costs must be included in the monthly maintenance fee.

Lansing Central Facility	\$1,533.00 X 36 months
Detroit Region 1 Facility	\$ 119.00 X 36 months
Grand Rapids Region 2 Facility	\$ 295.00 X 36 months



Livonia Region 7 Facility	\$ 164.00 X 36 months
Sterling Heights Region 8 Facility	\$ 209.00 X 36 months
WDIV TV4, Detroit	\$ 185.00 X 36 months
Detroit Metro Processing Rooms	\$ 154.00 X 36 months
<b>Total Cost for Monthly Systems Maintenance Services</b>	<b>\$ 2,659.00 X 36 months = \$95,724.00</b>

<b>Total Cost of Section 8 and Section 9</b>	<b>\$ 2,842.00 X 36 months = \$102,312.00</b>
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7. Yearly Pricing: Maintenance & Support

Yearly Pricing: Maintenance & Support

Maintenance and Support cost (includes helpdesk)	Software Cost (\$)	Comments (Provide Itemized breakdown for each software)
Base Contract Term	n/a	Existing EPS service and support included in the existing EPS service fees
First Year	Included in initial software cost	
Second Year	n/a	
Third Year	n/a	
Fourth Year	n/a	

Fifth Year	n/a
<b>Total Base Year Maintenance Costs</b>	<b>\$ included</b>
Option Years	
Sixth Year	n/a
Seventh Year	n/a
Eighth Year	n/a
Ninth Year	n/a
Tenth Year	n/a
<b>Total Option Year Maintenance Costs</b>	<b>\$ Included</b>
<b>Combined Total</b>	<b>\$ included</b>

Labor Costs

Note: The contractor may charge labor costs associated with new equipment installation, replacement of obsolete equipment, removal of existing equipment, or relocation of existing equipment. Labor costs shall not be charged for services associated with the monitoring and maintenance of the Lottery security systems. These costs are included in the Price Proposal Items No. 1 and 2.



Hourly Labor Cost	\$ various rates X 36 months
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Implementation – All systems are existing EPS provided, installed, serviced and tested Lottery owned systems

Category	Resources Required (Contractor to Identify each IT classification)	Total # of hours (Contractor to Identify # of hours per resource)	Hourly Rate (List rate for each resource)	Total cost (\$)	Comments
Implementation	Various rates apply	various	various	Provide Individual Implementation costs by category below and combined total.	
Installation	various	various	various	\$ n/a	
Configuration	various	various	various	\$ n/a	
System Testing	various	various	various	\$ n/a	
User Acceptance Testing	various	various	various	\$ n/a	
Transition Plan	various	various	various		
Combined Total Implementation Costs	various	various	various	\$ various	

Labor Rates for Future Enhancements (COTS)

Staffing Category	Key Staff	Firm Fixed Hourly Rate	Est. Hours (5 year total)	Extended Price
Contractor Project Manager	n/a	varies	varies	varies
List Any Other(s)	_____	_____	_____	_____
List Any Other(s)	_____	_____	_____	_____
List Any Other(s)	_____	_____	_____	_____
List Any Other(s)	_____	_____	_____	_____
List Any Other(s)	_____	_____	_____	_____
List Any Other(s)	_____	_____	_____	_____

**Notes:**

Hourly rates quoted are firm, fixed rates for the duration of the contract. Travel and other expenses will not be reimbursed. “Estimated Hours” and “Extended Price” are non-binding and will be used at the State’s discretion to determine best value to the State. The Contractor will utilize the fully loaded hourly rates detailed above for quoting future enhancements in accordance with **Section 1.103 – Future Enhancements**.



Note: The bidder is to provide costs for the following representative sampling of security system components, parts, and equipment. Information obtained from bidder quotes for Section 10 will be utilized for comparison purposes between the different vendor responses to this ITB.

Card Access System

DSX MCI	\$ 115.00 EACH
P400 Intelligent Controller	\$ n/a EACH
DSX-1020	\$ 640.00 EACH
Thin Line II Proximity Reader	\$150.00 EACH
Hughes ISO Proximity Card	\$8.00 EACH
DSX Winstart	\$ 210.00 EACH
Quadraplexor	\$ 260.00 EACH
Lantronics UDS 10-10MBS Interface Unit	\$ 185.00 EACH
Modem	\$ 295.00 EACH
DSX 1042 Intelligent Controller	\$ 1,215.00 EACH

Closed Circuit Monitoring System

Interior Fixed Dome Axis IT Camera	\$ 575.00 EACH
Exterior Fixed Vandal Resistant 3 MP Axis IP Cameras	\$ 1,340.00 EACH
(4) TB NVR Exacqvision	\$ 3,650.00 EACH

Intrusion Detection System

Husk-10 Panic Button Device	\$ 45.00 EACH
Radionictics Alpha Keypad	\$ 215.00 EACH
Motion Sensor	\$ 145.00 EACH

Additional Security Hardware - n/a – Existing EPS provided, installed, serviced, monitored and tested Lottery owned systems are currently in place at all state sites



Security Hardware Component (List each component below)	Brand	Model # / Description	Quantity	Unit Cost	Total cost (\$) (Transfer category totals to Table H)	Comments (Provide a narrative to explain how the Identified costs were derived)
n/a	n/a	n/a	n/a	n/a	\$ n/a	n/a
					\$	
					\$	
					\$	
					\$	
					\$	
Total n/a					\$ n/a	n/a

Additional Computing Hardware - n/a - Existing EPS provided, installed, serviced, monitored and tested Lottery owned systems are currently in place at all state sites

Computing Hardware Component (List each component below)	Brand	Model# / Description	Quantity	Unit Cost	Total cost (\$) (Transfer category totals to Table 1)	Comments (Provide a narrative to explain how the Identified costs were derived)
n/a	n/a	n/a	n/a	n/a	\$ n/a	n/a
					\$	
					\$	
					\$	
					\$	

\$  
\$ n/a

12. Software Licenses - n/a - Existing EPS provided, installed, serviced, monitored and tested Lottery owned system are currently in place at all state sites  
(Including all State Hosted and Third-Party Software)



Software Ilcense(s) cost (Add line Items as	Product Name and	Cost (\$)	Comments
Commercial Off The Shelf (COTS) Software	n/a	n/a	EPS will continue to service, monitor and test the exisllng EPS provided, installed and serviced Lottery access control, security, fire and video surveillance systems throughout the state
Camera Software	existing	n/a	
Badging Software	existing	n/a	
Design tools	n/a	n/a	
Drawing tools	n/a	n/a	
Testing tools: (such as issues tracking, defect testing, load/stress testing, configuration management (List and provide cost separately for each item) 1. 2. 3.	n/a	n/a	
Other system utilities (such as backup and disaster recovery, etc.) 1. 2.	n/a	n/a	
Server software	n/a	n/a	
Any other software (List): 1. 2.			
Total Cost of Software Ucenses Including COTS and Third Partv Software	n/a	n/a,	

Cost Summary Table

Transfer Totals From Tables Above	Total cost (\$) (Transfer category totals from tables above)
Hardware Card Access System	\$ n/a - existing
Hardware Closed Circuit Monitoring System	\$ n/a - existing
Hardware Intrusion Detection System	\$ n/a - existing
Additional Security Hardware	\$ n/a - existing
Additional Computing Hardware	\$ n/a - existing
Subtotal all Hardware Costs	\$ n/a - existing
Total Base Term - Software Licenses Including Third Party Software	\$ n/a - existing
Total for Base Term - Systems Monitoring Services	\$ 183.00
Combined Total Implementation Costs	\$ n/a - existing
Total Base Year Maintenance Costs	\$2,659.00
Base Tenn Total- Alf costs and fees	\$2,842.00
Total Option Year Maintenance Costs	\$2,842.00



**Schedule C - MSL Security Assessment Questionnaire**

**Organization**

	Response	If Yes. Elaborate
Security Policy	Yes, No, or NA	Planned, Just started, Partially completed, or Fully implemented
Have the Information Security Policies been issued to all employees, including 3rd party personnel and contractors?	yes	Fully implemented
Have all employees formally acknowledged adherence to the Information Security Policies?	no	
Are employees required to annually re-acknowledge compliance with Information Security Policies?	no	
How and when do you perform internal audits to measure compliance with the Information Security Policies?	yes	Fully implemented
How frequently do you perform periodic reviews to update security policies and guidelines for relevancy and emerging topics?	yes	annually
Are controls in place to restrict your ability to transmit customer data to unauthorized personnel inside and outside your company?	yes	Fully Implemented
Has an organizational policy on copyright compliance been implemented and communicated to all users?	no	
Do you have a policy that prohibits generic logon accounts and do you follow the policy?	yes	Fully implemented
Are all the following subject to data confidentiality agreements? 1. Permanent Employees 2. Contractors/Temporary staff 3. 3rd Party service providers	no	
Has your business issued an E-mail Usage Policy?	yes	Fully implemented
Do you take action against users who use e-mail in contradiction to the E-Mail Usage Policy?	yes	Fully implemented
Has your business issued an Internet usage Policy?	yes	Fully implemented
Are all users required to sign an internet usage and responsibility agreement that acknowledges compliance with the stated Internet Policy?	yes	Fully implemented
Are there comprehensive documentation standards for IT Development and operational controls?	yes	Fully implemented
Is there a clean desk policy?	no	
<b>Security Officer and Organization</b>		
Do you have a full-time Information Security Officer?	no	
Have roles and responsibilities for protecting assets and implementing security measures been explicitly defined and communicated to all the department/groups?	yes	Fully implemented
Has a formal risk analysis process been implemented to assist management in identifying security threats?	yes	Fully implemented



**Employee Security Focus**

	Response	If Yes, Elaborate
Awareness and Training	Yes, No, or NA	Planned, Just started, Partially completed, or Fully implemented
Has a formal, on-going Security Training program been implemented?	yes	Partially completed
Have you implemented a process to measure the effectiveness of the Security Training?	no	
Does the on-going Security Awareness program include instructing users on how to detect and avoid social engineering attacks as well as competitive intelligence probes?	na	
Have users been educated on how to report suspected security violations or vulnerabilities?	n/a	
Are regular bulletins sent to employees alerting them to risks and vulnerabilities involved in computing, including basic tasks such as backup, anti-virus scanning and choosing strong passwords?	yes	Per IT department
Is there a process to communicate security policy and guideline changes to employees?	yes	e-mail communication
Is the importance of Information Security visible throughout the organization? (Discussions in meetings, posters, etc)	n/a	
Do you notify employees that sensitive customer data cannot be loaded on personal PC's?	yes	Fully implemented
Are users of systems containing sensitive information made aware of legal and company obligations associated with the use of the application? (logon banner, splash screen)	n/a	
Have employees been instructed to challenge strangers or unescorted visitors in non-public areas?	yes	When within bldg
Are there periodic spot-checks of users' workspaces to monitor compliance with the Information protection program?	yes	By managers
<b>Recruitment Process/New Employee IT Orientation</b>		
Are new hire workers (including contractors and third party personnel) subjected to a history and background check?	yes	New hires, all EPS employees are subject to background checks
Do workers receive introductory awareness security training?	yes	IT department receives training
<b>Employee Exit/Transfer</b>		
Does the Human Resources department provide system administrators with a list of: 1. Workers transferring departments 2. Workers leaving the company	yes	Email sent out to appropriate department notifying changes
Is there a process to notify system administrators when workers leave the business?	yes	By email
Are exit interviews conducted to recover property given to workers? (employee badges, laptops, phones, air cards)	yes	Done by HR or manager
Is there an emergency program for immediate removal of employee's system access when the departing employee is identified as disgruntled or high risk?	yes	Email or direct contact by phone/In person
Are access/exit controls employed in your facility?	yes	Fully implemented
When employees leave, do you:	yes	Access card is



1. Check to see if they have sponsored accounts or badges for guests? 3. Question those guests on continued need? 4. Assign new sponsors based on that need?		deprogrammed
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**Change Management**

	Response	If Yes, Elaborate
<b>Change Management</b>	No	Planned, Just started, Partially completed, or Fully implemented
Do you have documented change control procedures to manage all modifications to the development environment (software, hardware, network)?	No	

**Network Security**

	Response	If Yes, Elaborate
<b>Router/Firewall</b>	Yes, No, or N/A	Planned, Just started, Partially completed, or Fully implemented
Do you maintain a current network diagram?	no	
Have at minimum, stateful firewalls been deployed at all external connections? If no, list the type of security mechanism used.	yes	Partially completed
Is the firewall(s) configured with a policy that all services are denied unless expressly permitted?	yes	Partially completed
Do you have a process /criteria to evaluate the risk of protocols/ports before implementing them on the firewalls?	no	
Is outgoing traffic directed to external proxy servers? If so, are these proxy servers resident on a DMZ?	no	
Are all services forbidden except when specifically requested?	yes	Partially completed
Is logging enabled on all firewalls, routers, and proxy servers? Is a process in place to review the logs regularly?	no	
Are the firewall(s) and/or proxy server(s) configured on a hardened platform, with limited functionality (are all unnecessary applications removed?)	yes	Partially completed
Is access to all firewalls, routers, and proxy servers restricted to only those people who need to manage these devices?	yes	Fully completed
Do administrators remotely access the routers and/or firewalls? If so are they securely authenticated by using one-time passwords or encrypted login sessions?	no	
Is there a process in place to ensure that all the routers/firewalls have the latest software and that they are patched regularly with the latest security updates from their respective vendors?	yes	Fully completed
<b>VPN-Remote User Connectivity</b>		
For computers used for VPN remote access, have you implemented a personal firewall?	n/a	
Do you only allow VPN access to computers that implement	n/a	
Do you have a process in place in order to cancel anyone's VPN	n/a	



**A10DI1cat1on Security**

	Response	If Yes, Elaborate
<b>Security in Application Development</b>	Yes, No, or N/A	Planned, Just started, Partially completed, or Fully implemented
Does your system development methodology address information security during the discovery and development phase?	n/a	
Do you perform a security code review during each phase of development?	n/a	
Are there separate environments for each customer for development and testing of systems?	n/a	
Are all the software developers working on the software given orientation in security requirements of the customer before they start work on the project?	n/a	
Are all developed software tested for malware by running anti-malware programs on them before delivering them to the customer?	n/a	
<b>Data Security</b>		
Are backups of business critical data done regularly (at least weekly)?	yes	Partially implemented
Do you have an on-line mechanism to verify that all backups complete successfully?	no	
Do you periodically restore information from backup tapes to ensure data integrity?	no	
Are back tapes kept in an environmentally controlled and secured area?	n/a	
Do you store tapes off-site? If yes, how is access to the tapes protected at the site?	n/a	
Are back up tapes stored in a location with physical access control?	n/a	
Is there a regular audit conducted to account for all the backup tapes?	n/a	
Are backup tapes ever destroyed, if yes then what procedure is used to destroy them?	n/a	
<b>Data Classification</b>		
Does all critical business data have an owner?	no	
Is critical information classified according to a classification guideline (Such as: secure, confidential, public)?	no	
Does access to sensitive customer data have to be authorized by the owners of the data?	no	

**System Security**

	Response	If Yes, Elaborate
<b>Server Vulnerability and Hardening</b>	Yes, No, or N/A	Planned, Just started, Partially completed, or Fully
		implemented
Is there a process to proactively obtain the latest security patches and updates?	yes	Partially implemented
Do you have a process to identify network, application, and OS based systems vulnerabilities?	no	



Do you use automated tools to assess system vulnerabilities?	yes	Fully implemented
Does your internal audit simulate outside attacks or do you hire external consultants to simulate attacks on your system to determine its susceptibility?	no	
Have all business critical systems used in customer software development been analyzed for their security risks?	n/a	
Do you have a security checklist for each OS deployed at your company?	no	
Do you regularly perform audits against your security checklists?	no	
Are your system security checklists updated on a regular basis?	no	
Are super user privileges regulated on systems in a written policy?	no	
Are applications regulated from running as a super user privilege?	no	
Do you require logon banners on systems?	no	
Are users with super user privileges reviewed and revised on a regular basis?	yes	Fully implemented
Do you have Anti-Virus software running on all of your Microsoft platforms (Servers, Workstations, PC's, and Laptops)?	yes	Fully implemented
Have you rolled out Anti-Virus Software to all of your email servers?	yes	Fully implemented
Are all of your email servers configured to check all incoming and outgoing emails for viruses, spam, Trojan horses and other threats?	yes	Fully implemented
Do you have a procedure to ensure that all the servers, user machines, and laptops are configured to automatically install the latest virus definition files?	yes	Fully implemented
Do you have a mechanism in place to check all FTP inbound and outbound file transfers for malware?	n/a	

**Identity Management**

	Response	If Yes, Elaborate
Account Management (User and High Privilege Accounts)	Yes, No, or N/A	Planned, Just started, Partially completed, or Fully implemented
Is each customer account owned or sponsored by the customer?	yes	Fully implemented
Does each account prohibit concurrent access? (User cannot be logged in from 2 or more different machines)	no	
Are all user accounts deleted or inactivated on the users' departure date?	yes	Fully implemented
Does the system disable user accounts after a period of inactivity?	no	
Do you periodically reconcile system accounts to existing users?	no	
Does the system lock user accounts after a number of failed Attempts to login?	yes	Fully implemented
Do you have a consistent user ID for a single person in all platforms and instances?	yes	Fully implemented
Are privileged accounts set up for emergency problem resolution fully loaded and subjected to regular reviews?	no	



Do you have a policy on privileged accounts?	no	
Do you have a compiled list of personnel with root or admin privileges?	yes	Fully implemented
Do you disable all the default accounts in all of your server applications? (Such as Oracle's default OBA account, Oracle's default scott-tiger account, Windows default remote assistant accounts, etc)	yes	Fully implemented
<b>Password Management and Authentication</b>		
Are users forced to change their passwords at first sign-on?	no	
Do passwords expire periodically (every xx days?)	no	
Are users prohibited from frequently re-using passwords? (For instance: password cannot be used within 6 months)	n/a	
Do you periodically run password cracking software to identify weak passwords?	no	
Do you have a process which notifies employees with weak passwords and forces a change?	n/a	
Do you conduct internal audits to identify weak password using social engineering?	n/a	

### Event Management

	Response	If Yes, Elaborate
Event Monitoring and Intrusion Detection	Yes, No, or N A	Planned, Just started, Partially completed, or Fully implemented
Is security auditing enabled on business critical systems?	no	
Do you have a process to review security audit logs in a timely, consistent manner, and act upon threats identified by these reviews?	n/a	
Is there an automated alerting/notification process that is initiated when defined security thresholds are exceeded?	n/a	
Are you using network based IDS products on interconnections? (For instance: Internet, web-hosting platforms, and 3rd party connections)	no	
Do you periodically perform network penetration tests either using internal audits or through external consultants?	yes	Fully implemented
Is your business critical networks configured with switches so that sniffer software is ineffective?	no	
Is the IDS(s) network placement frequently reviewed to ensure appropriate coverage?	yes	Partially implemented
<b>Incident Response</b>		
Is there a process for users to report to IT when they have identified a potential virus or other malware on their system?	yes	Partially implemented
Do you have a documented Security Incident Response procedure?	no	
Have you communicated the Security Incident Response procedure to all employees?	n/a	
Do you conduct drills to verify the readiness of the company to any security incident?	no	
<b>Disaster Recovery</b>		
Are there business mandated formal written Disaster Recovery Plans covering the partial or full loss of Servers, Critical Applications, or Physical facilities?	no	
Are there disaster recovery facilities for critical systems located in a geographically independent area?	yes	Partially completed



Have employees been trained on and are Disaster Recovery Plans tested and updated on at least an annual basis?	no	
Is there an owner responsible for devising and maintaining the Disaster Recovery Plans?	no	
Have the Disaster Recovery Plans been reviewed and approved at the managerial level?	no	
Have you identified "business critical" individuals to your business, and how to cope if they were unexpectedly unavailable?	no	
Has a business impact analysis been conducted on all customer applications and systems?	no	
Have you identified and documented your business critical applications and applied Business impact Analysis?	no	
Are training sessions conducted for all relevant personnel on backup, recovery, and contingency operating procedures?	no	

**Asset Security**

	Response	If Yes, Elaborate
Laptop Security	Yes. No. or N/A	Planned, Just started, Partially completed, or Fully implemented
Are all laptops required to be physically secured at all times?	n/a	EPS uses mobile thin clients to access VM ware VDI
Are users instructed to perform backups on a regular basis on all laptops containing business and customer critical data?	n/a	
Is there a process to ensure that business and customer critical data is encrypted?	n/a	
Are employees who travel with laptops provided with theft prevention devices?	n/a	
<b>Physical Security (Building and Client Machines)</b>		
Are ID badges issued to all working personnel (Permanent, contractor, agency temps, and visitors)?	yes	Fully implemented
Are personnel required to display their ID badges?	yes	Partially implemented
Do ID badges have to be periodically renewed?	yes	Fully implemented
Do you have visitor control procedures?	yes	Fully Implemented
Are fire detection/ suppression systems required in your buildings?	yes	Fully implemented
Are your premises protected by monitoring and detection systems? (CCTV)	yes	Fully implemented
Do you require security guards on all of your sites keeping business and customer critical data?	no	
Do guards at entrances/ exits randomly conduct spot checks to prevent unauthorized items from entering/leaving the building?	n/a	
Are physical security breaches logged and investigated?	no	
Are there random security inspections of the work place?	no	



Are results of security inspections of the work place reported to senior management?	n/a	
Is there a preventive maintenance program in effect for all environmental and protection systems?	yes	Fully implemented
Physical Security (Server Rooms)		
Are firewalls kept in physically secure areas?	yes	Fully implemented
Is there a process to restrict access to data centers only to people who have a business need?	yes	Fully implemented
Do you periodically review the list of people who have access to data centers?	yes	Fully implemented
Do outside signs and building directories avoid making reference to data centers or their locations?	yes	Fully implemented
Are servers kept in protected areas with restricted access?	yes	Fully implemented
Are there established guidelines detailing what security is needed in areas where servers are? (such as: access control logs)	yes	Fully implemented
Asset Inventory		
Do you have documented procedures for removing equipment from your facility?	no	
Do you have an inventory of authorized modems and their phone numbers, and are these inventories regularly reviewed?	yes	Fully implemented
Is there a process in place to ensure that inventory for all computer equipment is maintained for accuracy and currency?	yes	Fully implemented
Do you have methods for the secure disposal of unwanted equipment and documents?	yes	Fully implemented
Software Management		
Is there a process to ensure software inventory is maintained for accuracy and currency?	yes	Fully implemented
Is license documentation physically available for review?	no	
Are procedures in place to manage software license compliance?	yes	Fully implemented
Are new employees trained on the appropriate uses of command software?	no	



Is an authorized software list maintained and users made aware of the fact that they can only install those applications that are included in this list?	no	
Are employees prohibited from installing unauthorized and pirated software on their desktop and laptop computers?	yes	Fully implemented



# STATE OF MICHIGAN

## CONTRACT TERMS

This Contract (this “**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Engineered Protection Systems (EPS) (“**Contractor**”), a Michigan Corporation. This Contract is effective on January 1, 2017 (“**Effective Date**”), and unless earlier terminated, will expire on December 31, 2020 (the “**Term**”). **Three Years**

Contract may be renewed for up to **5 additional 1 - year period(s)**. Renewal must be by written notice from the State and will automatically extend 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 9.5**.

“**Acceptance Tests**” means such tests as may be conducted in accordance with **Section 9** and the Statement of Work to determine whether the Software meets the requirements of this Contract 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 26.3(b)(ii)**.

“**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 the Statement of Work, and approved by the State.

“**Authorized Services**” means any and all services performed by any Authorized User for the State for or in connection with the State's use of the Software or Documentation in accordance with this Contract, including any services comprising or relating to the analysis, development, delivery, installation, configuration, integration, testing, deployment, maintenance, support, repair, storage, copying, modification, enhancement, improvement or disaster recovery of, or training of Authorized Users concerning, the Software or Documentation.

“**Authorized Users**” means all Persons authorized by the State to access and use the Software under this Contract, subject to the maximum number of users specified in the applicable Statement of Work.

“**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 agency buyer to (a) act as the agency’s representative in all matters relating to the Contract, and (b) co-sign off on notice of Acceptance for the Software. The Business Owner will be identified in the Statement of Work.

“**Business Requirements Specification**” means the initial specification setting forth the State’s business requirements regarding the features and functionality of the Software, as set forth in the Statement of Work.

“**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 18.1**.

“**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 will be identified in the Statement of Work.

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

“**Contractor’s Bid Response**” means the Contractor’s proposal submitted in response to the RFP.

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

“**Contractor’s Test Package**” has the meaning set forth in **Section 8.2**.

“**Deliverables**” means the Software, and all other documents and other materials that Contractor is required to or otherwise does provide to the State under this Contract and otherwise in connection with any Services, including all items specifically identified as Deliverables in the Statement of Work.

“**Dispute Resolution Procedure**” has the meaning set forth in **Section 31.1**.

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

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

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



“**Fees**” means collectively, the License Fees, Implementation Fees, and Support Services Fees.

“**Financial Audit Period**” has the meaning set forth in **Section 29.1**.

“**Force Majeure**” has the meaning set forth in **Section 51.1**.

“**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 17.1**.

“**Implementation Fees**” has the meaning set forth in **Section 14.2**.

“**Implementation Plan**” means the schedule included in the Statement of Work setting forth the sequence of events for the performance of Services under the Statement of Work, including the Milestones and Milestone Dates.

“**Integration Testing**” has the meaning set forth in **Section 9.1(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 Statement of Work.

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

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

“**License Fee**” has the meaning set forth in **Section 14.1**.

“**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 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 Statement of Work 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 Statement of Work.

“**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, 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 4**.

“**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 Statement of Work, including such structural, functional and other features, conditions and components as hardware, operating software and system architecture and configuration.

“**Permitted Subcontractor**” has the meaning set forth in **Section 6.5**.

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

“**Pricing**” means any and all fees, rates and prices payable under this Contract, including pursuant to any Schedule or Exhibit hereto.

“**Pricing Schedule**” also referred to as “Cost Tables” means the Schedule A1ttached as **Schedule B1**, setting forth the License Fees and Implementation Fees, and any other fees, rates and prices payable under this Contract.

“**Project Manager**” is the individual appointed by each party to (a) monitor and coordinate the day-to-day activities of this Contract, and (b) for the State, to co-sign off on its notice of Acceptance for the Software. Each party's Project Manager will be identified in the Statement of Work.

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



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

“**Services**” means any of the services Contractor is required to or otherwise does provide under this Contract or the Statement of Work as more fully described in the body of this Contract and the Statement of Work.

“**Site**” means the physical location designated by the State in, or in accordance with, this Contract or the Statement of Work for delivery and installation of the Software.

“**Software**” means Contractor’s software set forth in the Statement of Work, and any Maintenance Releases provided to the State and any Configurations made by or for the State pursuant to this Contract, and all copies of the foregoing permitted under this Contract and the 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, Documentation, RFP or Contractor’s Bid Response, if any, for such Software, or elsewhere in the Statement of Work.

“**State**” means the State of Michigan.

“**State Data**” has the meaning set forth in **Section 17.1**.

“**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 7.1(a)**.

“**Statement of Work**” means any statement of work entered into by the parties and attached as a schedule to this Contract. The initial Statement of Work is attached as **Schedule A1**, and subsequent Statements of Work shall be sequentially identified and attached as Schedules A-1, A-2, A-3, etc.

“**Stop Work Order**” has the meaning set forth in **Section 24**.

“**Support Services**” means the software maintenance and support services Contractor is required to or otherwise does provide to the State.

“**Support Services Commencement Date**” means, with respect to the Software, the date on which the Warranty Period for the Software expires or such other date as may be set forth in the Statement of Work.

“**Support Services Fees**” has the meaning set forth in **Section 14.3**.



“**Technical Specification**” means, with respect to any Software, the document setting forth the technical specifications for such Software and included in the Statement of Work.

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

“**Test Data**” has the meaning set forth in **Section 8.2**.

“**Test Estimates**” has the meaning set forth in **Section 8.2**.

“**Testing Period**” has the meaning set forth in **Section 9.1(b)**.

“**Third Party**” means any Person other than the State or Contractor.

“**Transition Period**” has the meaning set forth in **Section 23.3**

“**Transition Responsibilities**” has the meaning set forth in **Section 23.3**.

“**Unauthorized Removal**” has the meaning set forth in **Section 6.4(b)**.

“**Unauthorized Removal Credit**” has the meaning set forth in **Section 6.4(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 Period**” means the ninety (90) calendar-day period commencing on the date of the State's Acceptance of the Software.

**2. Statements of Work.** Contractor shall provide Services and Deliverables pursuant to Statements of Work entered into under this Contract. No Statement of Work shall be effective unless signed by each party's Contract Administrator. The term of each Statement of Work shall commence on the parties' full execution of the Statement of Work and terminate when the parties have fully performed their obligations. The terms and conditions of this Contract will apply at all times to any Statements of Work entered into by the parties and attached as a schedule to this Contract. The State shall have the right to terminate such Statement of Work as set forth in **Section 23**. Contractor acknowledges that time is of the essence with respect to Contractor's obligations under each Statement of Work and agrees that prompt and timely performance of all such obligations in accordance with this Contract and the Statements of Work (including the Implementation Plan and all Milestone Dates) is strictly required.

2.1 Statement of Work Requirements. Each Statement of Work will include the following:

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



- (b) names and contact information for the State's Contract Administrator, Project Manager and Business Owner;
- (c) a detailed description of the Services to be provided under this Contract, including any training obligations of Contractor;
- (d) a detailed description of the Software to be provided under this Contract, including the:
  - (i) version and release number of the Software;
  - (ii) Business Requirements Specification;
  - (iii) Technical Specification; and
  - (iv) a description of the Documentation to be provided;
- (e) an Implementation Plan, including all Milestones, the corresponding Milestone Dates and the parties' respective responsibilities under the Implementation Plan;
- (f) the due dates for payment of Fees and any invoicing requirements, including any Milestones on which any such Fees are conditioned, and such other information as the parties deem necessary;
- (g) disclosure of all Open-Source Components (each identified on a separate exhibit to the Statement of Work), in each case accompanied by such related documents as may be required by this Contract;
- (h) description of all liquidated damages associated with this Contract; and
- (i) a detailed description of all State Resources required to complete the Implementation Plan.

2.2 Change Control Process. The State may at any time request in writing (each, a "**Change Request**") changes to the Statement of Work, 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 will 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 Statement of Work;
  - (iii) any additional State Resources Contractor deems necessary to carry out such Changes; and



- (iv) any increase or decrease in 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 Statement of Work 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 Statement of Work without the Change;
- (ii) require Contractor to continue to negotiate a Change Notice;
- (iii) initiate a Dispute Resolution Procedure; or
- (iv) notwithstanding any provision to the contrary in the Statement of Work, terminate this Contract under **Section 23**.

(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 Statement of Work 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 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 Maintenance and Support Services under this Contract.

(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 will be under no obligation to approve or otherwise respond to a Change Request initiated by Contractor.

**3. Software License.** Contractor hereby grants to the State and its Authorized Users the right and license to use the Software and Documentation in accordance with the terms and conditions of this Contract and in accordance with a License Agreement agreed upon by both the Contractor and State.



**4. Open-Source Licenses.** Any use hereunder of Open-Source Components shall be governed by, and subject to, the terms and conditions of the applicable open-source license (“**Open-Source License**”). Contractor shall identify and describe in an exhibit to the Statement of Work each of the Approved 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.

**5. Software Implementation.**

5.1 Implementation. Contractor will 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 Statement of Work.

5.2 Site Preparation. Unless otherwise set forth in the Statement of Work, 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 Statement of Work, 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.

**6. Performance of Services.** Contractor will 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 and the Statement of Work.

6.1 State Standards.

(a) The Contractor must adhere to all existing standards as described within the comprehensive listing of the State’s existing technology standards at <http://www.michigan.gov/dmb/0,4568,7-150-56355-108233--,00.html>.

(b) To the extent that Contractor has access to the State’s computer system, Contractor must comply with the State’s Acceptable Use Policy, see [http://michigan.gov/cybersecurity/0,1607,7-217-34395\\_34476---,00.html](http://michigan.gov/cybersecurity/0,1607,7-217-34395_34476---,00.html). 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.

(c) Contractor is not authorized to make changes to any State systems without prior written authorization from the State’s Project Manager. Any changes Contractor makes to any State systems with the State’s approval must be done according to applicable State procedures, including security, access, and configuration standards.

6.2 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 will:
  - (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) upon request, perform background checks on all Contractor Personnel prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also require additional background checks on Contractor Personnel as stated in the Statement of Work.

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

(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.

6.3 Contractor's Project Manager. Throughout the Term of this Contract, 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 will be identified in the Statement of Work.

- (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 this Contract; and
  - (iii) be the State's primary point of contact for communications with respect to this Contract, including with respect to 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 as set forth in the Statement of Work.

- (c) Contractor will maintain the same Project Manager throughout the Term of this Contract, 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;
- (iii) Contractor's Project Manager ceases to be employed by Contractor, whether by resignation, involuntary termination or otherwise.

(d) Contractor will promptly replace its Project Manager on the occurrence of any event set forth in **Section 6.3(c)**. Such replacement will be subject to the State's prior written approval.

#### 6.4 Contractor's Key Personnel.

(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 will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("**Unauthorized Removal**"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under **Section 23.1**.

(c) It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 23.1**, Contractor will issue to the State an amount equal to \$25,000 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 this Contract.

6.5 Subcontractors. Contractor will not, without the prior written approval of the State, which consent may be given or withheld in the State's sole discretion, engage any Third Party to perform Services. The State's approval of any such Third Party (each approved Third Party, 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 such Permitted Subcontractor (including such Permitted Subcontractor's employees who, to the extent providing Services or Deliverables, shall be 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.

## 7. State Obligations.

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

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

(b) 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 Statement of Work.

7.2 State Project Manager. Throughout the Term of this Contract, the State will maintain a State employee to serve as the State's Project Manager under this Contract. The State's Project Manager will be identified in the Statement of Work. The State's Project Manager will be available as set forth in the Statement of Work.

## 8. Pre-Delivery Testing.

8.1 Testing By Contractor. Before delivering and installing the Software, Contractor must:

(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 using the most up-to-date scanning software and definitions to confirm it is free of Harmful Code; and

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

8.2 Test Data and Estimates. Unless otherwise specified in the Statement of Work, Contractor shall 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 Estimates**," and together with Test Data, "**Contractor's Test Package**").



## 9. Acceptance Testing; Acceptance.

### 9.1 Acceptance Testing.

(a) Unless otherwise specified in the Statement of Work, upon installation of the Software, Acceptance Tests will be conducted as set forth in this **Section 9** to ensure the Software conforms to the requirements of this Contract, 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 successfully pass the Test Data or Test Estimate scripts as described by Contractor, 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 Estimates.

(b) All Acceptance Tests will take place at the designated Site(s) in the Operating Environment described in the Statement of Work, commence on the Business Day following installation of the Software and be conducted diligently for up to thirty (30) Business Days, or such other period as may be set forth in the Statement of Work (the "**Testing Period**"). Acceptance Tests will be conducted by the party responsible as set forth in the Statement of Work or, if the Statement of Work 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 Configuration to the Software under the Statement of Work, additional Acceptance Tests will be performed on the configured 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 9.1**, **Section 9.3**, and **Section 9.4**.

(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 will 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.

9.2 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 provide to 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 9.3** and **Section 9.4**.

(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 9.3** and **Section 9.4**; 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.

9.3 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 Statement of Work. 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 9.1(a)** or **Section 9.2(c)(i)**, identifying any Non-Conformities.

9.4 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 9**;

(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 this Contract and the Statement of Work and terminate this Contract for cause in accordance with **Section 23.1**.

9.5 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 9.2(b)**, or **Section 9.2(c)(ii)**.

**10. Training**. Contractor shall provide, at no additional charge, training on all uses of the Software permitted hereunder in accordance with the times, locations and other terms set forth in the Statement of Work. Upon



the State's request, Contractor shall timely provide training for additional Authorized Users or other additional training on all uses of the Software for which the State requests such training, at such reasonable times and locations and pursuant to such rates and other terms as are set forth in the Pricing Schedule.

**11. Maintenance Releases; New Versions**

11.1 Maintenance Releases. Provided that the State is current on its Support Services Fees, during the Term, Contractor shall provide the State, at no additional charge, with all Maintenance Releases, each of which will constitute Software and be subject to the terms and conditions of this Contract.

11.2 New Versions. Provided that the State is current on its Support Services Fees, during the Term, Contractor shall provide the State, at no additional charge, with all New Versions, each of which will constitute Software and be subject to the terms and conditions of this Contract.

11.3 Installation. The State has no obligation to install or use any Maintenance Release or New Version. If the State wishes to install any Maintenance Release or New Version, the State shall have the right to have such Maintenance Release or New Version installed, in the State's discretion, by Contractor or other authorized party as set forth in the Statement of Work. Contractor shall provide the State, at no additional charge, adequate Documentation for installation of the Maintenance Release or New Version that has been developed and tested by Contractor and Acceptance Tested by the State. The State's decision not to install or implement a Maintenance Release or New Version of the Software will not affect its right to receive Support Services throughout the Term of this Contract.

**12. Support Services**

12.1 Support Services. Contractor shall provide the State with the Support Services described in the Statement of Work. Such Support Services shall be provided:

(a) Free of charge during the Warranty Period, it being acknowledged and agreed that the License Fee includes full consideration for such Services during such period.

(b) Thereafter, for so long as the State elects to receive Support Services for the Software, in consideration of the State's payment of Support Services Fees in accordance with **Section 14** and the rates set forth in the Statement of Work.

12.2 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 ("Support Service Level Requirements")**, this Contract and the applicable Statement of Work.

(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**"). A designated role outlined in Section 1.202 in the Statement of Work will notify Contractor of Support Requests by e-mail, telephone or such other means as the parties may hereafter agree to in writing.

Support Request Classification	Description:	All Communications Sent To:
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	<b>Any Service Error Comprising or Causing any of the Following Events or Effects</b>	
Critical Service Error	<ul style="list-style-type: none"> <li>• Issue affecting entire system or single critical production function;</li> <li>• System down or operating in materially degraded state;</li> <li>• Data integrity at risk;</li> <li>• Material financial impact;</li> <li>• Declared a Critical Support Request by the State; or</li> <li>• Widespread access interruptions.</li> </ul>	<ul style="list-style-type: none"> <li>• Lead Security System Contact;</li> <li>• MSL Security Coordinator;</li> <li>• MSL Location System Contact; and</li> <li>• State Technical Lead</li> </ul>
High Service Error	<ul style="list-style-type: none"> <li>• Primary component failure that materially impairs its performance; or</li> <li>• Data entry or access is materially impaired on a limited basis.</li> </ul>	<ul style="list-style-type: none"> <li>• Lead Security System Contact;</li> <li>• MSL Security Coordinator;</li> <li>• MSL Location System Contact; and</li> <li>• State Technical Lead</li> </ul>
Medium Service Error	<ul style="list-style-type: none"> <li>• Hosted Service is operating with minor issues that can be addressed with a work around.</li> </ul>	<ul style="list-style-type: none"> <li>• MSL Security Coordinator;</li> <li>• MSL Location System Contact; and</li> <li>• State Technical Lead</li> </ul>
Low Service Error	<ul style="list-style-type: none"> <li>• Request for assistance, information, or services that are routine in nature.</li> </ul>	<ul style="list-style-type: none"> <li>• MSL Security Coordinator;</li> <li>• MSL Location System Contact; and</li> <li>• State Technical Lead</li> </ul>

(b) Response and Resolution Time Service Levels. 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	One (1) hour	Two (2) hours	Five percent (5%) of the Fees for the month in which the initial Service Level Failure begins and five percent (5%) of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error is not responded to within the required response time.	Five percent (5%) of the Fees for the month in which the initial Service Level Failure begins and five percent (5%) of such monthly Fees for the first additional hour or portion thereof that the corresponding Service Error remains un-Resolved, which amount will thereafter double for each additional one (1) hour increment.
High Service Error	Two (2) hours	Four (4) hours	Five percent (5%) of the Fees for the month in which the initial Service Level Failure begins and five percent (5%) of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error is not responded to within the required response time.	Five percent (5%) of the Fees for the month in which the initial Service Level Failure begins and five percent (5%) of such monthly Fees for each additional four (4) hour period or portion thereof that the corresponding Service Error remains un-Resolved.
Medium Service Error	Twenty-four (24) hours	Forty-Eight (48) hours	N/A	N/A
Low Service Error	Two (2) Business Days	Five (5) Business Days	N/A	N/A

(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, each of whom must be Key Personnel.



12.3 Support Service Level Credits. Failure to achieve any of the Support Service Level Requirements will constitute a Service Level Failure for which Contractor will issue to the State the corresponding service credits set forth in **Section 38.4(b)** (“**Service Level Credits**”).

12.4 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, shall be a part of, and by this reference is incorporated in, this Contract 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.

### 13. Source Code Escrow

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

### 14. Fees

14.1 License Fee. In consideration of, and as payment in full for, the rights and license to use the Software and Documentation as provided in this Contract and the License Agreement, the State shall pay to Contractor the license fees (the “**License Fee**”) set forth on the Pricing Schedule, subject to and in accordance with the terms and conditions of this Contract and the License Agreement, including the applicable timetable and other provisions of the Statement of Work and this **Section 14**.

14.2 Implementation Fees. In consideration of, and as payment in full for, Contractor’s provision of implementation services as provided in this Contract and the Statement of Work, the State shall pay to Contractor the implementation fees (the “**Implementation Fees**”) set forth on the Pricing Schedule, subject to and in accordance with the terms and conditions of this Contract, including the applicable timetable and other provisions of the Statement of Work and this **Section 14**.

14.3 Support Service Fees. In consideration of Contractor providing the Support Services, the State shall pay to Contractor the Support Services fees (the “**Support Service Fees**”) as described in the Cost Tables subject to and in accordance with the terms and conditions of this Contract and this **Section 14**.

14.4 Firm Pricing/Fee Changes. All Pricing set forth in this Contract is firm and will not be increased, except as otherwise expressly provided in this **Section 14.4**.

(a) The License Fee will not be increased at any time except for the addition of additional licenses, the fees for which licenses will also remain firm in accordance with the Pricing set forth in the Pricing Schedule.



#### 14.5 Administrative Fee And Reporting.

Reserved

### 15. Invoices and Payment.

15.1 Invoices. Contractor will invoice the State for Fees in accordance with the requirements set forth in the Statement of Work, 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 in both hard copy and electronic format, via such delivery means and to such address as are specified by the State in the Statement of Work. Each separate invoice must:

- (a) clearly identify the Contract to which it relates, in such manner as is required by the State;
- (b) list each Fee item separately;
- (c) include sufficient detail for each line item to enable the State to satisfy its accounting and charge-back requirements;
- (d) for Fees determined on a time and materials basis, report details regarding the number of hours performed during the billing period, the skill or labor category for such Contractor Personnel and the applicable hourly billing rates; and
- (e) include such other information as may be required by the State as set forth in the Statement of Work.

15.2 Payment. Invoices are due and payable by the State, in accordance with the State's standard payment procedures as specified in 1984 Public Act no. 279, 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/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment.

15.3 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.

15.4 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 shall 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 15.4** or any dispute arising therefrom.

15.5 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.

## 16. Intellectual Property Rights

### 16.1 Ownership Rights in Software

(a) Subject to the rights and licenses granted by Contractor in this Contract and the License Agreement, and the provisions of **Section 16.1(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 the Software; and
- (ii) none of the State or Authorized Users acquire any ownership of Intellectual Property Rights in or to the Software or 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 User Data, including all Intellectual Property Rights arising therefrom or relating thereto.

16.2 Rights in Open-Source Components. Ownership of all Intellectual Property Rights in Open-Source Components shall remain with the respective owners thereof, subject to the State's rights under the applicable Open-Source Licenses.

## 17. State Data.

17.1 Ownership. 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) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the 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 here listed; and (ii) 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 17.1** survives termination or expiration of this Contract.

17.2 Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Services. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This **Section 17.2** survives termination or expiration of this Contract.

17.3 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 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 who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; 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) be responsible for recreating lost State Data in the manner and on the schedule set by the State 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. This **Section 17.3** survives termination or expiration of this Contract.

**18. 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 18** survives termination or expiration of this Contract.

18.1 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; 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) 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.

18.2 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 Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to 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 18.2**.

18.3 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.

18.4 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 Statement of Work corresponding to the breach or threatened breach.

18.5 Surrender of Confidential Information upon Termination. Upon termination or expiration of this Contract or a Statement of Work, 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.

**19. HIPAA Compliance.** Reserved.

**20. Payment Card Industry Data Security Standard.** Reserved.

**21. CEPAS Electronic Receipt Processing Standard.** Reserved.

**22. ADA Compliance.** If the Services are required to be compliant with the Americans with Disabilities Act or Section 508 of the Workforce Rehabilitation Act of 1973, such compliance requirements shall be specified in the Statement of Work.

**23. Termination, Expiration, Transition.** The State may terminate this Contract, the Support Services, or any Statement of Work, in accordance with the following:

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

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

(b) If the State terminates this Contract under this **Section 23.1**, 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 23.2**.

(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.



23.2 Termination for Convenience. The State may immediately terminate this Contract in whole or in part, without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance immediately, or (b) continue to perform in accordance with **Section 23.3**. 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 to the extent the funds are available.

23.3 Transition Responsibilities. Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days; the “**Transition Period**”), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract to continue without interruption or adverse effect, and to facilitate the orderly transfer of the Services to the State or its designees. Such transition assistance may include but is not limited to: (a) continuing to perform the Services at the established 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.

23.4 Survival. This **Section 23** survives termination or expiration of this Contract.

**24. 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 State will not pay for any Services, Contractor’s lost profits, or any additional compensation during a stop work period.

## **25. Contractor Representations and Warranties.**

25.1 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.



25.2 Bid Response. Contractor represents and warrants to the State that:

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

(b) All written information furnished to the State by or for Contractor in connection with this Contract, including Contractor's Bid Response, 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;

(c) 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

(d) If any of the certifications, representations, or disclosures made in Contractor's Bid Response change after contract award, the Contractor is required to report those changes immediately to the Contract Administrator.

25.3 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:
- (i) Harmful Code; or
  - (ii) Open-Source Components or operate in such a way that it is developed or compiled with or linked to any Open-Source Components, other than Approved Open-Source Components specifically described in the Statement of Work.
- (g) all Documentation is and will be complete and accurate in all material respects when provided to the State such that at no time during the license term will the Software have any material undocumented feature; and
- (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.

#### 25.4 Performance Warranty and Limited Remedy.

- (a) Contractor warrants that during the Warranty Period:
  - (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
  - (ii) any media on which any Software or Documentation is delivered will be free of any damage or defect in design, material or workmanship, and will remain so under ordinary use as contemplated by (A) this Contract and, with respect to the Software, (B) the Documentation; and
  - (iii) 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.
- (b) If the Contractor breaches any of the warranties set forth in this **Section 25.4**, Contractor will, upon written notice from the State and at Contractor's sole cost and expense, remedy such breach in accordance with the Statement of Work, including the time periods set forth in such schedule. In the event Contractor fails to remedy such breach on a timely basis, the State will be entitled to such remedies as are specified in the Statement of Work or as may otherwise be available under this Contract, at law or in equity for



breach of its Maintenance and Support obligations. Nothing in this **Section 25.4** limits the State's right to indemnification under **Section 26**.

25.5 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.

## 26. Indemnification

26.1 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).

26.2 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 State deems necessary. Contractor will not, without the State's prior written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. Any litigation activity on behalf of the State or any of its subdivisions, under this **Section 26**, 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.

### 26.3 Infringement Remedies.

(a) The remedies set forth in this **Section 26.3** 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 this Contract; 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 amounts paid by the State in respect of such Allegedly Infringing Materials and any other aspects of the Software provided under the Statement of Work for the Allegedly Infringing Materials that the State cannot reasonably use as intended under this Contract; and
- (ii) in any case, 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 this Contract for cause under **Section 23.1**.

(e) Contractor will have no liability for any claim of infringement arising solely 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;

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

## 27. Liquidated Damages.

27.1 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 Statement of Work, and that these amounts are reasonable estimates of the State’s damages in accordance with applicable Law.

27.2 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.

27.3 The assessment of liquidated damages will not constitute a waiver or release of any other remedy the State may have under this Contract for Contractor’s breach of this Contract, including without limitation, the State’s right to terminate this Contract for cause under **Section 23.1**, and the State will be entitled in its discretion to recover actual damages caused by Contractor’s failure to perform its obligations under this



Contract. However, the State will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages.

27.4 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.

## **28. Damages Disclaimers and Limitations.**

28.1 The State's Disclaimer of Damages. THE STATE WILL NOT BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES.

28.2 The State's Limitation of Liability. IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT.

## **29. Records Maintenance, Inspection, Examination, and Audit.**

29.1 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.

29.2 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, 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.

29.3 Application. This **Section 29** applies to Contractor, any Affiliate, and any Permitted Subcontractor that performs Services in connection with this Contract.

## **30. Insurance**

### **30.1 Required Coverage.**

(a) **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary



and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of “A” or better and a financial size of VII or better.

Insurance Type	Additional Requirements
<b>Commercial General Liability Insurance</b>	
<p><u>Minimal Limits:</u>                      \$1,000,000 Each Occurrence Limit                      \$1,000,000 Personal &amp; Advertising Injury Limit                      \$2,000,000 General Aggregate Limit                      \$2,000,000 Products/Completed Operations</p> <p><u>Deductible Maximum:</u>                      \$50,000 Each Occurrence</p>	<p>Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.</p>
<b>Umbrella or Excess Liability Insurance</b>	
<p><u>Minimal Limits:</u>                      \$5,000,000 General Aggregate</p>	<p>Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds.</p>
<b>Automobile Liability Insurance</b>	
<p><u>Minimal Limits:</u>                      \$1,000,000 Per Occurrence</p>	
<b>Workers' Compensation Insurance</b>	
<p><u>Minimal Limits:</u>                      Coverage according to applicable laws governing work activities.</p>	<p>Waiver of subrogation, except where waiver is prohibited by law.</p>
<b>Employers Liability Insurance</b>	
<p><u>Minimal Limits:</u>                      \$500,000 Each Accident                      \$500,000 Each Employee by Disease                      \$500,000 Aggregate Disease.</p>	
<b>Privacy and Security Liability (Cyber Liability) Insurance</b>	
<p><u>Minimal Limits:</u>                      \$1,000,000 Each Occurrence                      \$1,000,000 Annual Aggregate</p>	<p>Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.</p>

(b) If Contractor's policy contains limits higher than the minimum limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits are not intended, and may not be construed to limit any liability or indemnity of Contractor to any indemnified party or other persons.



(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 of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

30.2 Non-waiver. This **Section 30** 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).

### 31. Dispute Resolution.

31.1 Unless otherwise specified in the Statement of Work, the parties will endeavor to resolve any Contract dispute in accordance with **Section 31** (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.

31.2 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 31** does not limit the State’s right to terminate this Contract.

### 32. General Provisions

#### 32.1 Force Majeure.

(a) Force Majeure Events. 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 (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) State Performance; Termination. 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 five (5) 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.

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

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

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

32.5 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 32.5**):

If to Contractor:            Engineered Protection Systems (EPS)  
    Suite 200, 750 Front Ave NW  
    Grand Rapids, MI 49504

   Email:                    kcarlson@epssecurity.com

   Attention:            Kevin Carlson - President

If to State:

State of Michigan DTMB Procurement 525 West Allegan, 1st Floor, NE Lansing, MI 48909-7526 Mitchellc4@michigan.gov 517-284-7020
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Attention: Christine Mitchell, Buyer Specialist

Notices sent in accordance with this **Section 32.5** 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 (5<sup>th</sup>) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

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

32.7 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 23.1**, 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 32.7** is void.

32.8 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.

32.9 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.

32.10 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.



32.11 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.

32.12 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 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 32.12**.

32.13 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.

32.14 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.

32.15 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 A1**                      Statement of Work
- Schedule B1**                      Pricing Schedule (Cost Tables)

32.16 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.

32.17 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 shall become 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, 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.

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

32.19 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.

32.20 Entire Agreement. This Contract, together with all Schedules, Exhibits, and the Statement of Work 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, Exhibits, and the Statement of Work, the following order of precedence governs: (a) first, this Contract, excluding its Exhibits and Schedules, and the Statement of Work; and (b) second, the Statement of Work as of the Effective Date; and (c) third, the Exhibits and Schedules to this Contract as of the Effective Date. NO TERMS ON CONTRACTORS 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.



## SCHEDULE A1

STIF PROPOSING A SAAS SOLUTION THESE TERMS AND CONDITIONS WILL APPLY:



# STATE OF MICHIGAN

## CONTRACT TERMS Software as a Service (SaaS)

This Software as a Service Contract (this “**Contract**”) is agreed to between the State of Michigan (the “**State**”) and [INSERT COMPANY NAME] (“**Contractor**”), a [INSERT STATE & ENTITY STATUS, E.G., A MICHIGAN CORPORATION OR A TEXAS LIMITED LIABILITY COMPANY]. This Contract is effective on [MONTH, DAY, YEAR] (“**Effective Date**”), and unless earlier terminated, will expire on [MONTH, DAY, YEAR] (the “**Term**”). **Five Years**

This Contract may be renewed for up to **5 additional 1 - year period(s)**. Renewal must be by written notice from the State and will automatically extend the Term of this Contract.]

### 33. Definitions.

“**Accept**” has the meaning set forth in **Section 36.2(b)**.

“**Acceptance**” has the meaning set forth in **Section 36.2(b)**.

“**Action**” has the meaning set forth in **Section 47.1**.

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

“**Allegedly Infringing Features**” has the meaning set forth in **Section 47.3(b)(ii)**.

“**Authorized Users**” means all Persons authorized by the State to access and use the Services through the State’s account under this Contract, subject to the maximum number of users specified in the applicable Statement of Work.

“**Availability**” has the meaning set forth in **Section 37(a)**.

“**Availability Requirement**” has the meaning set forth in **Section 37(a)**.

“**Available**” has the meaning set forth in **Section 37(a)**.

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

“**Change Notice**” has the meaning set forth in **Section 34.2**.

“**Code**” has the meaning set forth in **Section 53**.



“**Confidential Information**” has the meaning set forth in **Section 18.1**.

“**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 and execute any Change Notices under this Contract. Each party’s Contract Administrator will be identified in the Statement of Work.

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

“**Contractor Personnel**” means all employees and agents of Contractor, all Subcontractors and all employees and agents of any Subcontractor, involved in the performance of Services.

“**Contractor Security Officer**” has the meaning set forth in **Section 34.5(a)**.

“**Contractor Service Manager**” has the meaning set forth in **Section 34.5(a)**.

“**Contractor Systems**” has the meaning set forth in **Section 45.3**.

“**Corrective Action Plan**” has the meaning set forth in **Section 38.6**.

“**Critical Service Error**” has the meaning set forth in **Section 38.4(a)**.

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

“**DR Plan**” has the meaning set forth in **Section 46.3(a)**.

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

“**Exceptions**” has the meaning set forth in **Section 37.2**.

“**Fees**” has the meaning set forth in **Section 40.1**.

“**Force Majeure Event**” has the meaning set forth in **Section 51.1**.

“**Harmful Code**” means any software, hardware or other technologies, devices or means, the purpose or effect of which is to: (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner, any (i) computer, software, firmware, hardware, system or network, or (ii) any application or function of any of the foregoing or the integrity, use or operation of any data Processed thereby; or (b) prevent the State or any Authorized User from accessing or using the Services or Contractor Systems as intended by this Contract, and includes any virus, bug, trojan horse, worm, backdoor or other malicious computer code and any time bomb or drop dead device.

“**High Service Error**” has the meaning set forth in **Section 38.4(a)**.



“**HIPAA**” has the meaning set forth in **Section 17.1**.

“**Hosted Services**” has the meaning set forth in **Section 34.1(a)**.

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

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

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

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

“**Low Service Error**” has the meaning set forth in **Section 38.4(a)**.

“**Medium Service Error**” has the meaning set forth in **Section 38.4(a)**.

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

“**Personal Health Information (PHI)**” has the meaning set forth in **Section 17.1**.

“**Personally Identifiable Information (PII)**” has the meaning set forth in **Section 17.1**.

“**Process**” means to perform any operation or set of operations on any data, information, material, work, expression or other content, including to (a) collect, receive, input, upload, download, record, reproduce, store, organize, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other improvements or derivative works, (b) process, retrieve, output, consult, use, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or (c) block, erase or destroy. “**Processing**” and “**Processed**” have correlative meanings.

“**Reject**” has the meaning set forth in **Section 36.2(b)**.

“**Rejection**” has the meaning set forth in **Section 36.2(b)**.



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

“**Resolve**” has the meaning set forth in **Section 38.4(b)**.

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

“**Scheduled Downtime**” has the meaning set forth in **Section 37.3**.

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

“**Service Availability Credits**” has the meaning set forth in **Section 37.5(a)**.

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

“**Service Level Credits**” has the meaning set forth in **Section 38.5**.

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

“**Service Period**” has the meaning set forth in **Section 37(a)**.

“**Service Software**” means any and all software applications and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Contractor provides remote access to and use of as part of the Services.

“**Service Support Level Requirements**” has the meaning set forth in **Section 38.4**.

“**Services**” has the meaning set forth in **Section 34.1**.

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

“**Specifications**” means the specifications for the Services set forth in the applicable Statement of Work and, to the extent consistent with and not limiting of the foregoing, the Documentation.

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

“**State Data**” has the meaning set forth in **Section 17.1**.

“**State Modification**” has the meaning set forth in **Section 47.2(a)**.



“**State Project Manager**” has the meaning set forth in **Section 39.1**.

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

“**Statement of Work**” has the meaning set forth in **Section 34.1(a)**. The Initial Statement of Work is attached as **Schedule A1**, and subsequent Statements of Work shall be sequentially identified and attached as Schedule A1-1, A-2, A-3, etc.

“**Subcontractor**” means any entity that performs any Services under this Contract and otherwise has the meaning set forth in **Section 34.4(a)**.

“**Support Request**” has the meaning set forth in **Section 38.4(a)**.

“**Support Service Level Requirements**” has the meaning set forth in **Section 38.4**.

“**Support Services**” has the meaning set forth in **Section 38**.

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

“**Transition Period**” has the meaning set forth in **Section 23.3**.

“**Transition Responsibilities**” has the meaning set forth in **Section 23.3**.

“**Unauthorized Removal**” has the meaning set forth in **Section 34.8**.

“**Unauthorized Removal Credit**” has the meaning set forth in **Section 34.8**.

“**User Data**” means any and all information reflecting the access or use of the Hosted Services by or on behalf of the State or any Authorized User, including any end user profile, visit, session, impression, click-through or click-stream data and any statistical or other analysis, information or data based on or derived from any of the foregoing.

### **34. Services.**

34.1 Services. Throughout the Term and at all times in connection with its actual or required performance under this Contract, Contractor will, in accordance with all terms and conditions set forth in this Contract and each applicable Statement of Work, provide to the State and its Authorized Users the following services (“**Services**”):

(a) the hosting, management and operation of the Service Software and other services for remote electronic access and use by the State and its Authorized Users (“**Hosted Services**”) as described in one or more written, sequentially numbered, statements of work referencing this Contract, including all Specifications set forth in such statements of work, which, upon their execution will be attached as **Schedule A1** to this Contract and by this reference are incorporated in and made a part of this Contract (each, a “**Statement of Work**”);



(b) service maintenance and the Support Services as set forth in **Section 38** and in the applicable Statement of Work; and

(c) such other services as may be specified in the applicable Statement of Work.

#### 34.2 Change Notices.

(a) Any modifications or changes to the Services under any executed Statement of Work will be effective only if and when memorialized in a mutually agreed written change notice ("**Change Notice**") signed by both Parties, provided, however, that for any Services provided on a limited basis (for example, on a per user, server, CPU or named-user basis), the State may, at any time, increase or decrease the number of its licenses hereunder subject to a corresponding forward-going adjustment of the Fees to reflect these changes in accordance with the pricing set forth in the applicable Statement of Work.

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

34.3 Compliance With Laws. Contractor must comply with all applicable Laws as they concern this Contract, including by securing and maintaining all required and appropriate visas, work permits, business licenses and other documentation and clearances necessary for performance of the Services.

34.4 Subcontracting. Contractor will not itself, and will not permit any Person to, subcontract any Services, in whole or in part, without the State's prior written consent, which consent may be given or withheld in the State's sole discretion. Without limiting the foregoing:

(a) Contractor must ensure each Contractor subcontractor (including any subcontractor of a Contractor subcontractor, each, a "**Subcontractor**") complies with all relevant terms of this Contract, including all provisions relating to State Data or other Confidential Information of the State;

(b) the State's consent to any such Subcontractor does not relieve Contractor of its representations, warranties or obligations under this Contract;

(c) Contractor will remain responsible and liable for any and all: (i) performance required hereunder, including the proper supervision, coordination and performance of the Services; and (ii) acts and omissions of each Subcontractor (including, such Subcontractor's employees and agents, who, to the extent they are involved in providing any Services, are deemed Contractor Personnel) to the same extent as if such acts or omissions were by Contractor;

(d) any noncompliance by any Subcontractor or its employees or agents with the provisions of this Contract or any Statement of Work will constitute a breach by Contractor;

(e) prior to the provision of Services by any Subcontractor, Contractor must obtain from each such proposed Subcontractor:



- (i) the identity of such Subcontractor and the location of all its data centers, if any, that will be used in Processing any State Data, which information Contractor shall promptly disclose to the State in writing; and
- (ii) a written confidentiality, restricted use, work-for-hire and intellectual property rights assignment Contract in form and substance acceptable to the State, giving the State rights at least equal to those set forth in **Section 17** (State Data), **Section 1** (Confidentiality), **Section 45** (Security) and **Section 46** (Redundancy, Data Backup and Disaster Recovery) and containing the Subcontractor's acknowledgment of, and agreement to, the provisions of **Section 34.5** (Contractor Personnel), a fully-executed copy of which agreement Contractor will promptly provide to the State upon the State's request.

34.5 Contractor Personnel. Contractor will:

- (a) subject to the prior written approval of the State, appoint: (i) a Contractor employee to serve as a primary contact with respect to the Services who will have the authority to act on behalf of Contractor in matters pertaining to the receipt and processing of Support Requests and the Support Services (the "**Contractor Service Manager**"); and (ii) a Contractor employee to respond to the State's inquiries regarding the security of the Contractor Systems who has sufficient knowledge of the security of the Contractor Systems and the authority to act on behalf of Contractor in matters pertaining thereto ("**Contractor Security Officer**"); and (iii) other Key Personnel, who will be suitably skilled, experienced and qualified to perform the Services;
- (b) provide names and contact information for Contractor's Key Personnel on **Schedule B1** to this Contract;
- (c) maintain the same Contractor Service Manager, Contractor Security Officer and other Key Personnel throughout the Term and such additional period, if any, as Contractor is required to perform the Services, except for changes in such personnel due to: (i) the State's request pursuant to **Section 34.8(b)**; or (ii) the death, disability, resignation or termination of such personnel or other circumstances outside Contractor's reasonable control; and
- (d) upon the reasonable written request of the State, promptly replace any Key Personnel of Contractor.

34.6 Management and Payment of Contractor Personnel.

- (a) Contractor is solely responsible for the payment of Contractor Personnel, including all fees, expenses and compensation to, by or on behalf of any Contractor Personnel and, if applicable, the withholding of income taxes and payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits.
- (b) Contractor will ensure that no Person who has been convicted of a felony or any misdemeanor involving, in any way, theft, fraud, or bribery provides any Services or has access to any State Data, State Systems or State facilities. On a case-by-case basis, the State may request that Contractor initiate a background check on any Contractor Personnel before they may have access to State Data, State Systems or State facilities. Any request for a background check shall be initiated by the State and must be reasonably related to the type of work requested. The scope of the background check is at the discretion of the State and



the results shall be used solely to determine the eligibility of Contractor Personnel to work with State Data, State Systems or in State facilities. If provided to the State, results of background checks will be promptly returned to Contractor, and will be treated as Confidential Information. All investigations will include a Michigan State Police Background check (ICHAT) and may include a National Crime Information Center (NCIC) Finger Print check. Contractor will present attestation of satisfactory completion of such tests. Contractor is responsible for all costs and expenses associated with such background checks.

34.7 Time is of the Essence. Contractor acknowledges and agrees that time is of the essence with respect to its obligations under this Contract and that prompt and timely performance of all such obligations, including all timetables and other requirements of this Contract and each Statement of Work, is strictly required.

34.8 Contractor's Key Personnel.

(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 will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("**Unauthorized Removal**"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under **Section 39.1**.

(c) It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 39.1**, Contractor will issue to the State an amount equal to \$25,000 per individual (each, an "**Unauthorized Removal Credit**").

(d) Contractor acknowledges and agrees that each of the Unauthorized Removal Credits assessed under **Subsection 6.4(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 this Contract.

**35. License Grant and Restrictions.**



35.1 Contractor License Grant. Contractor hereby grants to the State, exercisable by and through its Authorized Users, a nonexclusive, royalty-free, irrevocable (except as provided herein) right and license during the Term and such additional periods, if any, as Contractor is required to perform Services under this Contract or any Statement of Work, to:

- (a) access and use the Hosted Services, including in operation with other software, hardware, systems, networks and services, for the State's business purposes, including for Processing State Data;
- (b) generate, print, copy, upload, download, store and otherwise Process all GUI, audio, visual, digital and other output, displays and other content as may result from any access to or use of the Services;
- (c) prepare, reproduce, print, download and use a reasonable number of copies of the Specifications and Documentation for any use of the Services under this Contract; and
- (d) access and use the Services for all such non-production uses and applications as may be necessary or useful for the effective use of the Hosted Services hereunder, including for purposes of analysis, development, configuration, integration, testing, training, maintenance, support and repair, which access and use will be without charge and not included for any purpose in any calculation of the State's or its Authorized Users' use of the Services, including for purposes of assessing any Fees or other consideration payable to Contractor or determining any excess use of the Hosted Services as described in **Section 35.3**.

35.2 License Restrictions. The State will not: (a) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make the Hosted Services available to any third party, except as expressly permitted by this Contract or in any Statement of Work; or (b) use or authorize the use of the Services or Documentation in any manner or for any purpose that is unlawful under applicable Law.

35.3 Use. The State will pay Contractor the corresponding Fees set forth in the Statement of Work for all Authorized Users access and use of the Service Software. Such Fees will be Contractor's sole and exclusive remedy for use of the Service Software, including any excess use.

35.4 State License Grant. The State hereby grants to Contractor a limited, non-exclusive, non-transferable license (i) to use the State's (or individual agency's, department's or division's) name, trademarks, service marks or logos, solely in accordance with the State's specifications, and (ii) to display, reproduce, distribute and transmit in digital form the State's (or individual agency's, department's or division's) name, trademarks, service marks or logos in connection with promotion of the Services as communicated to Contractor by the State. Use of the State's (or individual agency's, department's or division's) name, trademarks, service marks or logos will be specified in the applicable Statement of Work.

## **36. Service Preparation, Testing and Acceptance.**

36.1 Service Preparation. Promptly upon the parties' execution of a Statement of Work, Contractor will take all steps necessary to make the Services procured thereunder ready and available for the State's use in accordance with the Statement of Work and this Contract, including any applicable milestone date or dates set forth in such Statement of Work.

36.2 Testing and Acceptance.



(a) When Contractor notifies the State in writing that the Hosted Services are ready for use in a production environment, the State will have thirty (30) days (or such other period as may be agreed upon by the Parties in writing) from receipt of the notice to test the Hosted Services to determine whether they comply in all material respects with the requirements of this Contract and the Specifications.

(b) Upon completion of the State's testing, the State will notify Contractor of its acceptance ("**Accept**" or "**Acceptance**") or, if it has identified any noncompliance with the Specifications, rejection ("**Reject**" or "**Rejection**") of the Hosted Services. If the State Rejects the Hosted Services, the State will provide a written list of items that must be corrected. On receipt of the State's notice, Contractor will promptly commence, at no additional cost or charge to the State, all reasonable efforts to complete, as quickly as possible and in any event within twenty (20) days (or such other period as may be agreed upon by the Parties in writing) from receipt of the State's notice, such necessary corrections, repairs and modifications to the Hosted Services to bring them into full compliance with the Specifications.

(c) If any corrective measures are required under **Section 36.2(b)**, upon completion of all such measures, Contractor will notify the State in writing and the process set forth in **Section 36.2(a)** and **Section 36.2(b)** will be repeated; provided that if the State determines that the Hosted Services, as revised, still do not comply in all material respects with the Specifications, the State may, in its sole discretion:

- (i) require the Contractor to repeat the correction, repair and modification process set forth in **Section 36.2(b)** at no additional cost or charge to the State; or
- (ii) terminate any and all of the relevant Statement of Work, this Contract and any other Statements of Work hereunder.

(d) The parties will repeat the foregoing procedure until the State Accepts the Hosted Services or elects to terminate the relevant Statement of Work as provided in **Section 36.2(c)(ii)** above. If the State so terminates the relevant Statement of Work, Contractor must refund to the State all sums previously paid to Contractor under such Statement of Work within ten (10) Business Days of the State's written notice of termination, and the State will be relieved of all obligations thereunder.

### **37. 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 99.95% of the time, excluding only the time the Hosted Services are not Available solely as 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 Specifications. "**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:  $(\text{Actual Uptime} - \text{Total Minutes in Service Period Hosted Services are not Available Due to an Exception}) \div (\text{Scheduled Uptime} - \text{Total Minutes in Service Period Hosted Services are not Available Due to an Exception}) \times 100 = \text{Availability}$ .



37.2 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 actually or required to be provided or controlled by Contractor; or
- (c) Scheduled Downtime as set forth in **Section 37.3**.

37.3 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 for the State’s approval, extensions of Scheduled Downtime above five (5) hours and such approval by the State may not be unreasonably withheld or delayed.

37.4 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 and Specifications. The report must be in electronic or such other form as the State may approve in writing and shall include, at a minimum: (a) the actual performance of the Hosted Services relative to the Availability Requirement and Specifications; and (b) if Hosted Service performance has failed in any respect to meet or exceed the Availability Requirement or Specifications 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 and Specifications are fully met.

37.5 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 Fees payable for Hosted Services provided during the Service Period (“**Service Availability Credits**”):

Availability	Credit of Fees
≥99.95%	None
<99.9% but ≥99.0%	15%
<99.0% but ≥95.0%	35%
<95.0%	100%

(b) Any Service Availability Credits due under this **Section 37.5** will be applied in accordance with **Section 40.11**.

(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 this Contract and/or the applicable Statement of Work on written notice to Contractor with no liability, obligation or penalty to the State by reason of such termination.



**38. Support and Maintenance Services.** Contractor will provide Hosted Service maintenance and support services (collectively, “**Support Services**”) in accordance with the provisions of this **Section 38**. The Support Services are included in the Services, and Contractor may not assess any additional Fees, costs or charges for such Support Services.

38.1 Support Service Responsibilities. Contractor will:

- (a) correct all Service Errors in accordance with the Support Service Level Requirements, including by providing defect repair, programming corrections and remedial programming;
- (b) provide unlimited telephone support during the hours of 8 a.m. to 5 p.m. Eastern Time on Business Days;
- (c) Provide online access to technical support bulletins and other user support information and forums, to the full extent Contractor makes such resources available to its other customers; and
- (d) Respond to and Resolve Support Requests as specified in this **Section 38**.

38.2 Service Monitoring and Management. 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 or in the applicable Statement of Work):
  - (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 or in the applicable Statement of Work 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 38.4**, 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.



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

(a) all updates, bug fixes, enhancements, new releases, new versions and other improvements to the Hosted Services, including the Service Software, that Contractor provides at no additional charge to its other similarly situated customers; and

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

38.4 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 38.4 (“Support Service Level Requirements”)**, this Contract and the applicable Statement of Work.

(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**”). A designated role outlined in Section 1.202 in the Statement of Work will notify Contractor of Support Requests by e-mail, telephone or such other means as the parties may hereafter agree to in writing.

<b>Support Request Classification</b>	<b>Description: Any Service Error Comprising or Causing any of the Following Events or Effects</b>	<b>All Communications Sent To:</b>
Critical Service Error	<ul style="list-style-type: none"> <li>• Issue affecting entire system or single critical production function;</li> <li>• System down or operating in materially degraded state;</li> <li>• Data integrity at risk;</li> <li>• Material financial impact;</li> <li>• Declared a Critical Support Request by the State; or</li> <li>• Widespread access interruptions.</li> </ul>	<ul style="list-style-type: none"> <li>• Lead Security System Contact;</li> <li>• MSL Security Coordinator;</li> <li>• MSL Location System Contact; and</li> <li>• State Technical Lead</li> </ul>
High Service Error	<ul style="list-style-type: none"> <li>• Primary component failure that materially impairs its performance; or</li> <li>• Data entry or access is materially impaired on a limited basis.</li> </ul>	<ul style="list-style-type: none"> <li>• Lead Security System Contact;</li> <li>• MSL Security Coordinator;</li> <li>• MSL Location System Contact; and</li> <li>• State Technical Lead</li> </ul>



Medium Service Error	<ul style="list-style-type: none"> <li>Hosted Service is operating with minor issues that can be addressed with a work around.</li> </ul>	<ul style="list-style-type: none"> <li>MSL Security Coordinator;</li> <li>MSL Location System Contact; and</li> <li>State Technical Lead</li> </ul>
Low Service Error	<ul style="list-style-type: none"> <li>Request for assistance, information, or services that are routine in nature.</li> </ul>	<ul style="list-style-type: none"> <li>MSL Security Coordinator;</li> <li>MSL Location System Contact; and</li> <li>State Technical Lead</li> </ul>

(b) Response and Resolution Time Service Levels. 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	One (1) hour	Two (2) hours	Five percent (5%) of the Fees for the month in which the initial Service Level Failure begins and five percent (5%) of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error is not responded to within the required response time.	Five percent (5%) of the Fees for the month in which the initial Service Level Failure begins and five percent (5%) of such monthly Fees for the first additional hour or portion thereof that the corresponding Service Error remains un-Resolved, which amount will thereafter double



				for each additional one (1) hour increment.
High Service Error	Two (2) hours	Four (4) hours	Five percent (5%) of the Fees for the month in which the initial Service Level Failure begins and five percent (5%) of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error is not responded to within the required response time.	Five percent (5%) of the Fees for the month in which the initial Service Level Failure begins and five percent (5%) of such monthly Fees for each additional four (4) hour period or portion thereof that the corresponding Service Error remains un-Resolved.
Medium Service Error	Twenty-four (24) hours	Forty-Eight (48) hours	N/A	N/A
Low Service Error	Two (2) Business Days	Five (5) Business Days	N/A	N/A

(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, each of whom must be Key Personnel.

38.5 Support Service Level Credits. Failure to achieve any of the Support Service Level Requirements will constitute a Service Level Failure for which Contractor will issue to the State the corresponding service credits set forth in **Section 38.4(b)** (“**Service Level Credits**”) in accordance with **Section 40.11**.

38.6 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, shall be a part of, and by this reference is incorporated in, this Contract 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.

### 39. Termination, Expiration and Transition.

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

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

(b) If the State terminates this Contract under this **Section 23.1**, 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 23.2**.

(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. 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.

39.2 Termination for Convenience. The State may immediately terminate this Contract in whole or in part, without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance immediately, or (b) continue to perform in accordance with **Section 23.3**. 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 to the extent the funds are available.

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



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

(a) Contractor will be obligated to perform all Transition Responsibilities specified in **Section 23.3**.

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

(c) Contractor will (i) return to the State all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the State's Confidential Information; (ii) permanently erase the State's Confidential Information from its computer systems; and (iii) certify in writing to the State that it has complied with the requirements of this **Section 39**, in each case to the extent such materials are not required by Contractor for Transition Responsibilities, if any.

(d) Notwithstanding any provisions of this Contract or any Statement of Work to the contrary, upon the State's termination of this Contract or any Statement of Work for cause pursuant to **Section 23.1**, the State will have the right and option to continue to access and use the Services under each applicable Statement of Work, in whole and in part, for a period not to exceed one hundred and eighty (180) days from the effective date of such termination pursuant to the terms and conditions of this Contract and each applicable Statement of Work and at a reduced rate of fifty (50%) off the applicable Fees set forth in each such Statement of Work.

39.5 Survival. The rights, obligations and conditions set forth in this **Section 39.5** and **Section 33** (Definitions), **Section 39.3** (Effect of Termination; Data Retention), **Section 17** (State Data), **Section 1** (Confidentiality), **Section 45** (Security), **Section 47.1** (Indemnification), **Section 48** (Limitations of Liability), **Section 49** (Representations and Warranties), **Section 29** (Insurance) and **Section 53** (Effect of Contractor Bankruptcy) and **Section 29** (General Provisions), and any right, obligation or condition that, by its express terms or nature and context is intended to survive the termination or expiration of this Contract, survives any such termination or expiration hereof.

#### 40. Fees and Expenses.

40.1 Fees. Subject to the terms and conditions of this Contract and the applicable Statement of Work, including the provisions of this **Section 40**, the State shall pay the fees set forth in the applicable Statement of Work, subject to such increases and adjustments as may be permitted pursuant to **Section 40.2** ("**Fees During Option Years**").

40.2 Fees During Option Years. Contractor's Fees are fixed during the initial period of the Term. Contractor may increase Fees for any renewal period by providing written notice to the State at least sixty (60) calendar days prior to the commencement of such renewal period. An increase of Fees for any renewal period may not exceed three percent (3%) of the Fees effective during the immediately preceding twelve (12) month period. No increase in Fees is effective unless made in compliance with the provisions of this **Section 40.2**.

40.3 Administrative Fee and Reporting. Reserved.

40.4 Responsibility for Costs. Contractor is responsible for all costs and expenses incurred in or incidental to the performance of Services, including all costs of any materials supplied by Contractor, all fees, fines,



licenses, bonds, or taxes required of or imposed against Contractor, and all other of Contractor's costs of doing business.

40.5 Taxes. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Contract are for the State's exclusive use. Notwithstanding the foregoing, all 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.

40.6 Invoices. Contractor will invoice the State for all Fees in electronic format, via such delivery means and to such address as are specified by the State in writing from time to time. If more than one Statement of Work is in effect, Contractor shall provide separate invoices for each Statement of Work. Each separate invoice must: (a) clearly identify the Statement of Work to which it relates, in such manner as is required by the State; (b) list each Fee item and Service Credit separately; (c) include sufficient detail for each line item to enable the State to verify the calculation thereof; (d) for Fees determined on a time and materials basis, report details of time taken to perform Services, and such other information as the State requires, on a per-individual basis; and (e) include such other information as may be required by the State as set forth in the applicable Statement of Work.

40.7 Payment Terms. Invoices are due and payable by the State, in accordance with the State's standard payment procedures as specified in 1984 Public Act no. 279, MCL 17.51, *et seq.*, within forty-five (45) calendar days after receipt, provided the State determines that the invoice was properly rendered.

40.8 State Audits of Contractor.

(a) During the Term, and for four (4) years after, Contractor must maintain complete and accurate books and records regarding its business operations relevant to the calculation of Fees and any other information relevant to Contractor's compliance with this **Section 40**. During the Term, and for four (4) years after, upon the State's request, Contractor must make such books and records and appropriate personnel, including all financial information, available during normal business hours for inspection and audit by the State or its authorized representative, provided that the State: (a) provides Contractor with at least fifteen (15) days prior notice of any audit, and (b) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Contractor's normal business operations.

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

40.9 Payment Does Not Imply Acceptance. The making of any payment or payments by the State, or the receipt thereof by Contractor, will in no way affect the responsibility of Contractor to perform the Services in accordance with this Contract, and will not imply the State's Acceptance of any Services or the waiver of any warranties or requirements of this Contract, including any right to Service Credits.



40.10 Withhold Remedy. In addition and cumulative to all other remedies in law, at equity and under this Contract, if Contractor is in material default of its performance or other obligations under this Contract or any Statement of Work and fails to cure the default within fifteen (15) days after receipt of the State's written notice of default, the State may, without waiving any other rights under this Contract, elect to withhold from the payments due to Contractor under this Contract during the period beginning with the sixteenth (16th) day after Contractor's receipt of such notice of default, and ending on the date that the default has been cured to the reasonable satisfaction of the State, an amount that, in the State's reasonable judgment, is in proportion to the magnitude of the default or the Service that Contractor is not providing. Upon Contractor's cure of the default, the State will cause the withheld payments to be paid to Contractor, without interest. Upon a final and binding legal determination that the State has withheld any payment in bad faith, such payment shall promptly be paid to Contractor.

40.11 Availability and Support Service Level Credits. Contractor acknowledges and agrees that each of the Service Availability Credits and Service Level Credits assessed pursuant to **Section Error! Reference source not found.** and **Section 38**, 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, or combination thereof, 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.

40.12 Right of Set-off. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

40.13 Support Not to be Withheld or Delayed. Contractor may not withhold or delay any Hosted Services or Support Services or fail to perform any other Services or obligations hereunder by reason of: (a) the State's good faith withholding of any payment or amount in accordance with this **Section 40**; or (b) any dispute whatsoever between the parties, including any payment or other dispute arising under or concerning this Contract or any other agreement between the parties.

#### 41. State Data.

41.1 Ownership. The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) User Data; and (b) the State's data collected, used, processed, stored, or generated in connection with the Services, including but not limited to (i) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the 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 here listed; and (ii) 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 17.1** survives termination or expiration of this Contract.



41.2 Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Services. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This **Section 17.2** survives termination or expiration of this Contract.

41.3 Extraction of State Data. Contractor must, within one (1) Business Days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of State Data in the format specified by the State.

41.4 Discovery. Contractor shall 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 Hosted Services. Contractor shall notify the State Project Manager by the fastest means available and also in writing. In no event shall Contractor provide such notification more than twenty-four (24) hours after Contractor receives the request. Contractor shall not respond to subpoenas, service of process, FOIA requests, and other legal requests related to the State without first notifying the 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 State review, revision and approval.

41.5 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 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 who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; 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; (g) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and (h) 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. This **Section 17.3** survives termination or expiration of this Contract.

41.6 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.

41.7 ADA Compliance. If the Services are required to be compliant with the Americans with Disabilities Act or Section 508 of the Workforce Rehabilitation Act of 1973, such compliance requirements shall be specified in the Statement of Work.

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

42. **PCI Compliance**. Reserved.

43. **CEPAS Electronic Receipt Processing Standard**. Reserved.

44. **Confidentiality**.

44.1 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; 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) 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.



44.2 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 Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to 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 18.2**.

44.3 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.

44.4 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 Statement of Work corresponding to the breach or threatened breach.

44.5 Surrender of Confidential Information upon Termination. Upon termination or expiration of this Contract or a Statement of Work, 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.

## 45. Security.

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

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



(b) maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State's Confidential Information that comply with the requirements of the State's data security policies as set forth in **Schedule C1** (Data Security Requirements) and, to the extent such practices and standards are consistent with and not less protective than the foregoing requirements, are at least equal to applicable best industry practices and standards;

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

(d) take all reasonable measures to:

- (i) 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;
- (ii) prevent (A) the State and its Authorized Users from having access to the data of other customers or such other customer's users of the Services; (B) the State's Confidential Information from being commingled with or contaminated by the data of other customers or their users of the Services; and (C) unauthorized access to any the State's Confidential Information;

(e) continuously monitor its systems for potential areas where security could be breached.

45.2 Unauthorized Access. Contractor may not access, and shall 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 this Contract, and in no case exceed the scope of the State's authorization pursuant to this **Section 45.2**. All State-authorized connectivity or attempted connectivity to State Systems shall be only through the State's security gateways and firewalls and in compliance with the State's security policies set forth in **Schedule C1** as the same may be supplemented or amended by the State and provided to Contractor from time to time.

45.3 Contractor Systems. Contractor will be solely responsible for the information technology infrastructure, including all computers, software, databases, electronic systems (including database management systems) and networks used by or for Contractor to access State Systems or otherwise in connection with the Services ("**Contractor Systems**") and shall prevent unauthorized access to State Systems through the Contractor Systems.

45.4 Security Audits. During the Term, Contractor will:

(a) maintain complete and accurate records relating to its data protection practices and the security 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 **Section 45**;

(b) 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 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 this Contract. The State may, but is not obligated to, perform such security audits, which shall, at the State's option and request, include penetration and security tests, of any and all Contractor Systems and their housing facilities and operating environments; and

(c) if Contractor engages a third party auditor to perform a Statement on Standards for Attestation Engagements No. 16 (SSAE 16) audit of Contractor's operations, information security program or disaster recovery/business continuity plan, Contractor will provide a copy of the audit report to the State within thirty (30) days after Contractor's receipt of such report. Any such audit reports will be recognized as Contractor's Confidential Information.

45.5 Nonexclusive Remedy for Security Breach. Any failure of the Services to meet the requirements of this Contract 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 this Contract for which the State, at its option, may terminate this 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.

**46. Redundancy, Data Backup and Disaster Recovery**. Contractor must, in accordance with the provisions of this **Section 46**, maintain or cause to be maintained disaster avoidance procedures designed to safeguard State Data and the State's other Confidential Information, Contractor's Processing capability and the availability of the Hosted Services, in each case throughout the Term and at all times in connection with its actual or required performance of the Services hereunder. The force majeure provisions of **Section 51.1** do not limit Contractor's obligations under this **Section 46**.

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



46.2 Data Backup. Contractor will conduct, or cause to be conducted, daily back-ups of State Data and perform, or cause to be performed, other periodic back-ups of State Data on at least a weekly basis and store such back-ups as specified in **Statement of Work**. All backed up State Data shall be located in the continental United States. On written notice from the State and, in any case, on a quarterly basis, Contractor will provide the State with a copy of the backed up State Data in such machine readable format as is specified in **Statement of Work** or the State otherwise reasonably requests. Contractor will provide all quarterly back-ups at its sole cost and expense. The State will reimburse Contractor for all media costs and shipping charges reasonably incurred in fulfilling the State's additional requests for copies of backed up the State Data.

46.3 Disaster Recovery/Business Continuity. Throughout the Term and at all times in connection with its actual or required performance of the Services hereunder, Contractor will:

(a) maintain a Business Continuity and Disaster Recovery Plan for the Hosted Services (the "**DR Plan**"), and implement such DR Plan in the event of any unplanned interruption of the Hosted Services. Contractor's current DR Plan, revision history, and any reports or summaries relating to past testing of or pursuant to the DR Plan are attached as **Schedule C1**. Contractor will actively test, review and update the DR Plan on at least an annual basis using industry best practices as guidance. Contractor will provide the State with copies of all such updates to the Plan within fifteen (15) days of its adoption by Contractor. All updates to the DR Plan are subject to the requirements of this **Section 46.3**; and

(b) provide the State with copies of all reports resulting from any testing of or pursuant to the DR Plan promptly after Contractor's receipt or preparation. 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 under **Section 23.1(a)**.

#### 47. Indemnification.

47.1 General Indemnification. Contractor must defend, indemnify and hold harmless the State, and the State's agencies, departments, officers, directors, employees, agents, and contractors from and against all Losses arising out of or resulting from any third party claim, suit, action or proceeding (each, an "**Action**") that does or is alleged to arise out of or result from:

(a) the Contractor's breach of any representation, warranty, covenant or obligation of Contractor under this Contract (including, in the case of Contractor, any action or failure to act by any Contractor Personnel that, if taken or not taken by Contractor, would constitute such a breach by Contractor); or

(b) any negligence or more culpable act or omission (including recklessness or willful misconduct) in connection with the performance or nonperformance of any Services or other activity actually or required to be performed by or on behalf of, Contractor (including, in the case of Contractor, any Contractor Personnel) under this Contract, provided that, to the extent that any Action or Losses described in this **Section 47.1** arises out of, results from, or alleges a claim that any of the Services does or threatens to infringe, misappropriate or otherwise violate any Intellectual Property Rights or other rights of any third party, Contractor's obligations with respect to such Action and Losses, if any, shall be subject to the terms and conditions of **Section 47.2(a)** through **Section 47.2(b)** and **Section 47.3**.



47.2 Infringement Indemnification By Contractor. Contractor must indemnify, defend and hold the State, and the State's agencies, departments, officers, directors, employees, agents, and contractors harmless from and against all Losses arising out of or resulting from any Action that does or is alleged to arise out of or result from a claim that any of the Services, or the State's or any Authorized User's use thereof, actually does or threatens to infringe, misappropriate or otherwise violate any Intellectual Property Right or other right of a third party, provided however, that Contractor shall have no liability or obligation for any Action or Loss to the extent that such Action or Loss arises out of or results from any:

(a) alteration or modification of the Hosted Services or Service Software by or on behalf of the State or any Authorized User without Contractor's authorization (each, a "**State Modification**"), provided that no infringement, misappropriation or other violation of third party rights would have occurred without such State Modification and provided further that any alteration or modification made by or for Contractor at the State's request shall not be excluded from Contractor's indemnification obligations hereunder unless (i) such alteration or modification has been made pursuant to the State's written specifications and (ii) the Hosted Services, as altered or modified in accordance with the State's specifications, would not have violated such third party rights but for the manner in which the alteration or modification was implemented by or for Contractor; and

(b) use of the Hosted Services 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 (i) no violation of third party rights would have occurred without such combination and (ii) such software or service is not commercially available and not standard in Contractor's or the State's industry and there are no Specifications, Documentation, or other materials indicating Contractor's specification, authorization or approval of the use of the Hosted Services in combination therewith.

47.3 Mitigation.

(a) If Contractor receives or otherwise learns of any threat, warning or notice alleging that all, or any component or feature, of the Services violates a third party's rights, Contractor must promptly notify the State of such fact in writing, and take all commercially reasonable actions necessary to ensure the State's continued right to access and use such Services and otherwise protect the State from any Losses in connection therewith, including investigating such allegation and obtaining a credible opinion of counsel that it is without merit.

(b) Subject to the exclusions set forth in clauses (a) and (b) of **Section 47.2**, if any of the Services or any component or feature thereof is ruled to infringe or otherwise violate the rights of any third party by any court of competent jurisdiction, or if any use of any Services or any component thereof is threatened to be enjoined, or is likely to be enjoined or otherwise the subject of an infringement or misappropriation claim, Contractor must, at Contractor's sole cost and expense:

- (i) procure for the State the right to continue to access and use the Services to the full extent contemplated by this Contract and the Specifications; or
- (ii) modify or replace all components, features and operations of the Services that infringe or are alleged to infringe ("**Allegedly Infringing Features**") to make the Services non-infringing while providing equally or more suitable features and functionality, which modified and



replacement services shall constitute Services and be subject to the terms and conditions of this Contract.

(c) If neither of the remedies set forth in **Section 47.3(b)** is reasonably available with respect to the Allegedly Infringing Features 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 any prepaid Fees for Services that have not been provided; and
- (ii) in any case, at its sole cost and expense, secure the right for the State to continue using the Allegedly Infringing Features for a transition period of up to six (6) months to allow the State to replace the affected Services or Allegedly Infringing Features without disruption.

(d) The remedies set forth in this **Section 47.3** 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 pursuant to **Section 47.1** and **Section 47.2**.

47.4 Indemnification Procedure. The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations. The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense, at its own expense, if the State deems necessary. Contractor will not, without the State's prior written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. Any litigation activity on behalf of the State or any of its subdivisions, under this **Section 47**, 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.

#### **48. Limitations of Liability.**

(a) The State's Disclaimer of Damages. THE STATE WILL NOT BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES.

(b) The State's Limitation of Liability. IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES SPECIFIED IN THE STATEMENT OF WORK.

#### **49. Contractor Representations and Warranties.**

49.1 Authority and Bid Response. 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;
- (d) when executed and delivered by Contractor, this Contract will constitute the legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with its terms;
- (e) the prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder to the RFP; and no attempt was made by Contractor to induce any other Person to submit or not submit a proposal for the purpose of restricting competition;
- (f) all written information furnished to the State by or for Contractor in connection with this Contract, including Contractor's bid response to the RFP, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading; and
- (g) Contractor is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of the contract.

49.2 Software and Service Warranties. Contractor represents and warrants to the State that:

- (a) Contractor has, and throughout the Term and any additional periods during which Contractor does or is required to perform the Services will have, the unconditional and irrevocable right, power and authority, including all permits and licenses required, to provide the Services and grant and perform all rights and licenses granted or required to be granted by it under this Contract;
- (b) neither Contractor's grant of the rights or licenses hereunder nor its performance of any Services or other obligations under this Contract does or at any time will: (i) conflict with or violate any applicable Law, including any Law relating to data privacy, data security or personal information; (ii) require the consent, approval or authorization of any governmental or regulatory authority or other third party; or (iii) require the provision of any payment or other consideration by the State or any Authorized User to any third party, and Contractor shall promptly notify the State in writing if it becomes aware of any change in any applicable Law that would preclude Contractor's performance of its material obligations hereunder;
- (c) as accessed and used by the State or any Authorized User in accordance with this Contract and the Specifications, the Hosted Services, Documentation and all other Services and materials provided by



Contractor under this Contract will not infringe, misappropriate or otherwise violate any Intellectual Property Right or other right of any third party;

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

(e) the Service Software and Services will in all material respects conform to and perform in accordance with the Specifications and all requirements of this Contract, including the Availability and Availability Requirement provisions set forth in **Section Error! Reference source not found.**;

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

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

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

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

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

(k) Contractor acknowledges that the State cannot indemnify any third parties, including but not limited to any third-party software providers that provide software that will be incorporated in or otherwise used in conjunction with the Services, and that notwithstanding anything to the contrary contained in any third-party software license agreement or end user license agreement, the State will not indemnify any third party software provider for any reason whatsoever.



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

**50. Insurance.**

50.1 Required Coverage.

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

Required Limits	Additional Requirements
<b>Commercial General Liability Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations  <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.
<b>Umbrella or Excess Liability Insurance</b>	
<u>Minimal Limits:</u> \$5,000,000 General Aggregate	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds.
<b>Automobile Liability Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
<b>Workers' Compensation Insurance</b>	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
<b>Employers Liability Insurance</b>	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	
<b>Privacy and Security Liability (Cyber Liability) Insurance</b>	



<p><u>Minimal Limits:</u>                  \$1,000,000 Each Occurrence                  \$1,000,000 Annual Aggregate</p>	<p>Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.</p>
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(b) If Contractor's policy contains limits higher than the minimum limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits are not intended, and may not be construed to limit any liability or indemnity of Contractor to any indemnified party or other persons.

(c) If any of the required policies provide **claims-made** coverage, 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 of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

50.2 Non-waiver. This **Section 29** 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).

**51. Force Majeure.**

51.1 Force Majeure Events. Subject to **Section 51.2**, neither party will be liable or responsible to the other party, or be deemed to have defaulted under or breached this Contract, for any failure or delay in fulfilling or performing any term hereof, when and to the extent such failure or delay is caused by: acts of God, flood, fire or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Contract, national or regional emergency, or any passage of law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition (each of the foregoing, a “**Force Majeure Event**”), in each case provided that: (a) such event is outside the reasonable control of the affected party; (b) the affected party gives prompt written notice to the other party, stating the period of time the occurrence is expected to continue; (c) the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.



51.2 State Performance; Termination. 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 five (5) 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.

51.3 Exclusions; Non-suspended Obligations. Notwithstanding the foregoing or any other provisions of this Contract:

- (a) in no event will any of the following be considered a Force Majeure Event:
  - (i) shutdowns, disruptions or malfunctions of the Contractor Systems or any of Contractor's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to the Contractor Systems; or
  - (ii) the delay or failure of any Contractor Personnel to perform any obligation of Contractor hereunder unless such delay or failure to perform is itself by reason of a Force Majeure Event; and

(b) no Force Majeure Event modifies or excuses Contractor's obligations under **Section Error! Reference source not found.** (Service Availability and Service Availability Credits), **Section 38.5** (Support Service Level Credits), **Section 17** (State Data), **Section 1** (Confidentiality), **Section 45** (Security), **Section 46** (Data Backup and Disaster Recovery) or **Section 47** (Indemnification), or any Availability Requirement, Support Service Level Requirement, Service Availability Credit or Service Level Credit obligations under this Contract or an applicable Statement of Work.

**52. Software Escrow.** Reserved.

**53. Effect of Contractor Bankruptcy.** All rights and licenses granted by Contractor under this Contract are and shall be deemed to be rights and licenses to "intellectual property," and the subject matter of this agreement, including the Services, is and shall 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**") (11 U.S.C. § 365(n) (2010)). The State has the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Contract (including all executory Statement of Works). Without limiting the generality of the foregoing, if Contractor or its estate becomes subject to any bankruptcy or similar proceeding, subject to the State's rights of election, all rights and licenses granted to the State under this Contract will continue subject to the respective terms and conditions of this Contract, and will not be affected, even by Contractor's rejection of this Contract.

**54. General Provisions.**

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



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

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

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

If to Contractor:

[CONTRACTOR ADDRESS]

E-mail: [E-MAIL ADDRESS]

Attention: [NAME OF OFFICER TO RECEIVE NOTICES]

Title: [TITLE OF OFFICER TO RECEIVE NOTICES]

If to the State:

Christine Mitchell 525 West Allegan, 1st Floor, NE Lansing, MI 48909-7526 Mitchellc4@michigan.gov 517-284-7020
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Attention: Christine Mitchell

Title: Buyer Specialist

Notices sent in accordance with this **Section 32.5** 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 (5<sup>th</sup>) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

54.5 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](http://www.michigan.gov/mideal). Upon written agreement between the State and Contractor, this Contract may also be extended to: (a) other State of Michigan departments and agencies, or (b) State of Michigan employees, and (c) other states (including governmental subdivisions and authorized entities). If extended, Contractor must supply all Contract Activities at the established Contract



prices and terms, and the State reserves the right to impose an administrative fee 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.

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

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

54.8 Assignment. Contractor may not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Contract, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the State's prior written consent. The State has the right to terminate this Contract in its entirety or any Services or Statements of Work hereunder, pursuant to **Section 23.2**, 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 32.7** is void.

54.9 No Third-party Beneficiaries. This Contract is for the sole benefit of the parties and 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.

54.10 Amendment and Modification; Waiver. This Contract may only be amended, modified or supplemented by an agreement in writing signed by each party's Contract Administrator. No waiver by any party of any of the provisions hereof is effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Contract, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Contract will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.



54.11 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.

54.12 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

54.13 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 would 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 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 32.12**.

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

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

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

**Schedule A**

Statement of Work

**Schedule B**

Cost Tables

54.17 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.