



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 **3**
 to
 Contract Number **190000001001**

CONTRACTOR	Acclaim
	227 State Street
	Harrisburg, PA 17101
	John Kucek
	773-495-8307
	johnku@acclaimsystems.com
	VS0109497

STATE	Program Manager	Various	MDARD
	Contract Administrator	Sarah Platte	DTMB
		517-219-2406	
		plattes3@michigan.gov	

CONTRACT SUMMARY

MDARD USAHERDS MAINTENANCE AND ENHANCEMENT SERVICES

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
October 1, 2019	October 1, 2022	2 - 1 Year	October 1, 2023

PAYMENT TERMS	DELIVERY TIMEFRAME

ALTERNATE PAYMENT OPTIONS	EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	One Year	<input type="checkbox"/>		October 1, 2024
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$179,922.50	\$60,000.00	\$239,922.50		

DESCRIPTION

Effective 5/10/2023, the State will be exercising the final, one-year option that is available on the Contract. The State also adds \$60,000.00 in funding to support the use of this option year.

All other terms, conditions, specifications, and pricing remain the same. Per DTMB Contractor, agency, DTMB Procurement Services approval, and Administrative Board approval on 9/26/2019.

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

AGENCY	NAME	PHONE	EMAIL
MDARD	Amanda Budd	517-284-5678	BuddA@michigan.gov
DTMB	Laura Brancheau	517-335-1334	BrancheauL@michigan.gov



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CONTRACT CHANGE NOTICE

Change Notice Number 2
 to
 Contract Number 190000001001

CONTRACTOR	Acclaim
	227 State Street
	Harrisburg, PA 17101
	John Kucek
	773-495-8307
	johnku@acclaimsystems.com
	VS0109497

STATE	Program Manager	Various	MDARD
	Contract Administrator	Sarah Platte	DTMB
		517-219-2406	
		plattes3@michigan.gov	

CONTRACT SUMMARY				
MDARD USAHERDS MAINTENANCE AND ENHANCEMENT SERVICES				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE	
October 1, 2019	October 1, 2022	2 - 1 Year	October 1, 2023	
PAYMENT TERMS		DELIVERY TIMEFRAME		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		October 1, 2023
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$148,750.00	\$31,172.50	\$179,922.50		
DESCRIPTION				
Effective 10/31/2022, the State adds \$31,172.50 to the Contract so that MDARD may create a maintenance order for FY23.				
All other terms, conditions, specifications, and pricing remain the same. Per DTMB Contractor, agency, and DTMB Procurement Services approval.				

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

AGENCY	NAME	PHONE	EMAIL
MDARD	Amanda Budd	517-284-5678	BuddA@michigan.gov
DTMB	Laura Brancheau	517-335-1334	BrancheauL@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 1
 to
 Contract Number 190000001001

CONTRACTOR	Acclaim
	227 State Street
	Harrisburg, PA 17101
	John Kucek
	773-495-8307
	johnku@acclaimsystems.com
	VS0109497

STATE	Program Manager	Various	MDARD
	Contract Administrator	Sarah Platte	DTMB
		(517) 241-7000	
		plattes3@michigan.gov	

CONTRACT SUMMARY

MDARD USAHERDS MAINTENANCE AND ENHANCEMENT SERVICES

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
October 1, 2019	October 1, 2022	2 - 1 Year	October 1, 2022

PAYMENT TERMS	DELIVERY TIMEFRAME

ALTERNATE PAYMENT OPTIONS	EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	U}^A^æ	<input type="checkbox"/>		October 1, 2023

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
\$148,750.00		

DESCRIPTION

Effective 3/18/2022, the parties add the attached Statement of Work, for the purpose of adding a new module that will be replacing two legacy databases to improve data quality. The State also exercises one of the two remaining option years, with a revised expiration date of 10/1/2023.

All other terms, conditions, specifications, and pricing remain the same. Per DTMB Contractor, agency, DTMB Procurement Services approval.

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

AGENCY	NAME	PHONE	EMAIL
MDARD	Amanda Budd	517-284-5678	BuddA@michigan.gov
DTMB	Laura Brancheau	517-335-1334	BrancheauL@michigan.gov

STATEMENT OF WORK - IT CHANGE NOTICE

Project Title: USAHerds WRM EWB Enhancement	Period of Coverage:
Requesting Department: MDARD	Date: 3/1/2022
Agency Project Manager: Amanda Budd	Phone: 517-284-5678
DTMB Project Manager:	Phone:

Brief description of services to be provided:

BACKGROUND:

This project is to enhance the USAHerds database with a new module that will replace two legacy Access databases that the Bovine Tuberculosis program is currently using to collect data.

PROJECT OBJECTIVE:

Improve data quality by reducing the number data systems that are used for the Bovine Tuberculosis program. Provide efficiencies within the Bovine TB program as the systems currently are unable to talk to each other and multiple systems have to be updated with the same information.

SCOPE OF WORK:

TASKS:

Technical support is required to assist with the following tasks: Update of coding to USAHerds Database.

DELIVERABLES:

Deliverables will not be considered complete until the Agency Project Manager has formally accepted them. Deliverables for this project include:
 WRM and EWB enhancement module for USAHerds.

ACCEPTANCE CRITERIA:

STATEMENT OF WORK - IT CHANGE NOTICE

PROJECT CONTROL AND REPORTS:

A bi-weekly progress report must be submitted to the Agency and DTMB Project Managers throughout the life of this project. This report may be submitted with the billing invoice. Each bi-weekly progress report must contain the following:

1. **Hours:** Indicate the number of hours expended during the past two weeks, and the cumulative total to date for the project. Also state whether the remaining hours are sufficient to complete the project.
2. **Accomplishments:** Indicate what was worked on and what was completed during the current reporting period.
3. **Funds:** Indicate the amount of funds expended during the current reporting period, and the cumulative total to date for the project.

SPECIFIC DEPARTMENT STANDARDS:

Agency standards, if any, in addition to DTMB standards.

PAYMENT SCHEDULE:

Payment will be made on a all invoices must include the purchase order number basis. DTMB will pay CONTRACTOR upon receipt of properly completed invoice(s) which shall be submitted to the billing address on the State issued purchase order not more often than monthly. DTMB Accounts Payable area will coordinate obtaining Agency and DTMB Project Manager approvals. All invoices should reflect actual work completed by payment date and must be approved by the Agency and DTMB Project Manager prior to payment. The invoices shall describe and document to the State's satisfaction a description of the work performed, the progress of the project, and fees. When expenses are invoiced, receipts will need to be provided along with a detailed breakdown of each type of expense.

Payment shall be considered timely if made by DTMB within forty-five (45) days after receipt of properly completed invoices.

EXPENSES:

The State will NOT pay for any travel expenses, including hotel, mileage, meals, parking, etc.

PROJECT CONTACTS:

The designated Agency Project Manager is: Amanda Budd
MDARD

Animal Industry Division
Constitution Hall
525 W Allegan St.
Lansing, MI 48893
517-284-5678
budda@michigan.gov

The designated DTMB Project Manager is:

Name Department
Area Building/Floor
Address
City/State/Zip
Phone NumberFax
Number Email
Address

AGENCY RESPONSIBILITIES:

LOCATION OF WHERE THE WORK IS TO BE PERFORMED:

Consultants will work at:Enter
Location

EXPECTED CONTRACTOR WORK HOURS AND CONDITIONS:

Work hours are not to exceed eight (8) hours a day, forty (40) hours a week. Normal working hours of 8:00 am to 5:00 pm are to be observed unless otherwise agreed to inwriting.

No overtime will be permitted.

This purchase order is a release from Contract Number [redacted]. This purchaseorder, statement of work, and the terms and conditions of Contract Number constitute the entire agreement between the State and the Contractor.

PROJECT PLAN:

Implementation Details:

1. Repurpose an existing license (DWA) to capture WRM/EWB;
 - a. Information to capture
 - i. Classification (renamed Registration); Possible values: Wildlife Risk Mitigation (WRM),Enhanced Wildlife Biosecurity (EWB)
 - ii. Status; Possible values: Verified, Not Verified
 - iii. Exp Date – is not required for WRM/EWB, so MDARD will need to populate with a default value of 12/31/currentYear and update as needed. If/when the licensee/participant changes from one classification to another, the expiration date canbe updated to a date prior to the switch.



2. Add ability to capture and search Addendum properties – additional premises associated
3. Add ability to capture and search by Contacts. Inspectors will be added as contacts.
4. Add ability to define inspectors for the license.
5. [Add ability to capture Plans](#). Plan information include:
 - a. Effective (required)/End Date (not-required) – cannot create a new plan if an existing plan is not end-dated.
 - b. Plan Headings/Standards:
 - i. Feed Storage/Usage
 - ii. Cattle Areas
 - iii. Water Sources
 - iv. Waste & Spoilage
 - v. Wildlife Management
 - c. For each heading, user can specify below information.
 - i. Standards – numbered list and text will be provided by MDARD; numbers must be unique to be able to establish link with the Verification (inspection below)

- ii. Practice in Place - multi-line textbox
 - iii. Action Required to Meet Standard - multi-line textbox
- 6. Allow users to create a new plan from an existing plan (clone to create new). Plans cannot overlapeffective dates. Inspectors can add **initial** Plan, readonly for inspectors otherwise.
- 7. Add ability to capture plan Verification. Verifications will be captured as inspections.
 - a. Information to capture
 - i. Inspection Date
 - ii. Inspector
 - iii. Purpose; possible values (semi-annual): Winter, Summer
 - iv. Status; possible values: Pending, Complete, Reviewed
 - v. Final Result; possible values: In Compliance, Out of Compliance
 - vi. Review Date (date value), Reviewed By (text value; non-inspector)
 - vii. Allow File Upload
 - b. Inspection Line Items –
 - i. Initial list will be from the Headings/Standards provided by MDARD.
 - ii. Each line item will have a result dropdown (Compliant, Non-Compliant, N/A) and Text value (shown as Comment below) which will be populated from the current plan. Theplan text will be read-only and not updatable.
 - 1. MDARD will advise the text from the plan to populate.
 - 2. MDARD will advise what default result value to use for each line item
 - 3. MDARD can opt to have each Heading/Standard as a line item vs Heading as a line item and Standard as a Violation

The screenshot shows a web form titled "Inspection Line Items". It contains two main input areas. The first is labeled "A. Construction*" and includes a dropdown menu currently set to "1. Compliant". The second is labeled "A. Construction Comment" and contains a text area with the message "Plan information auto-populated here. Inspector cannot modify (Read Only)".

- c. Allow print of
 - i. Verification Letter
 - ii. Warning Letter – based on template and inspection values
- 8. Add ability to search inspection (verification)
- 9. Modify existing Permit processing to use WRM/EWB implementaton documented here instead of Premises Alert
 - a. need to determine how to handle if premises exists for multiple licenses
 - b. need to determine if Addendum premises are considered to have the same status as the main premises
- 10. Migrate current Premises Alerts as WRM/EWB licenses
 - a. Premises
 - b. Owner – from Premises Animal Owner
 - c. Classification – from Premises Alert checked
 - d. Status – MDARD will define prior to development/build
- 11. Enable Offline Inspector access, that will allow inspectors to
 - a. Search/View participants/licenses
 - b. View Plan; Add Initial Plan
 - c. Create/View Verification (or inspections)

Assumption:

1. No renewal letter or certificate will be printed
2. USAHERDS Offline System Requirements

For installation of the USAHERDS Offline/Disconnected web application to the local machine, user credentials with Administrator access will be required, to enable the necessary Windows modules (.NETFramework, IIS) and install the necessary software (SQL Server 2016 Express, Report Viewer, and the USAHERDS sync framework).

a. Hardware Requirements:

- i. Processor: at least 2 physical cores, 2.4GHz
- ii. Memory: at least 8GB RAM
- iii. Hard Disk: USAHERDS requires at least 20GB free disc space. A solid-state drive (SSD) is recommended but not required.

b. Software requirements:

- i. Windows 10 Pro
- ii. Microsoft .NET Framework 4.6.2
- iii. Microsoft IIS

Approval

Requestor must complete the section below and return to Acclaim before the estimate expiration date for work to be scheduled. If estimate costs are to be shared, please provide details of the agreed-upon cost sharing in the Notes section.

Approved By:

Approved Date:

- Charge ___ hours against our Support Hours to implement this enhancement.
- Bill/Send separate Invoice or Statement of Work (SOW)

Notes/Comments:

Addendum 1: Plan Sample

Specific Standard	Briefly Describe Practice in Place	Action Required to Meet Standard
1.04 Cattle are not permitted at any time to graze or feed in areas providing deer cover or deer attractants.	Click here to enter text.	Click here to enter text.
1.04 Cattle do not shelter in areas with good deer cover.	Click here to enter text.	Click here to enter text.
1.04 Fences and gates are in good working order and gates are kept closed.	Click here to enter text.	Click here to enter text.
2.01 Cattle are fed daily AND/OR cattle are confined so they are continuously with their feed OR small herd of cattle is fed as close to the barn as possible. <i>Specify which situation is applicable.</i>	Click here to enter text.	Click here to enter text.
2.02 Cattle are fed within buildings or fenced feeding enclosures capable of preventing deer intrusions (8-foot fences) OR at least 100 yards from deer cover where practicable. <i>Specify which situation is applicable.</i>	Click here to enter text.	Click here to enter text.
2.06 Salt blocks and mineral supplements are located in farm buildings OR within small fenced areas where the cattle are continuously present OR at least 100 yards from deer cover where practicable. <i>Specify which situation is applicable.</i>	Click here to enter text.	Click here to enter text.
3.01 Grain and concentrates are being stored in such a way as to prevent access by deer.	Click here to enter text.	Click here to enter text.
3.03 Silage and/or haylage are effectively protected from contamination by deer with a barrier.	Click here to enter text.	Click here to enter text.
3.03 Hay is effectively protected from contamination by deer with a barrier.	Click here to enter text.	Click here to enter text.
3.04 Hay is off the field and stored by Nov. 15	Click here to enter text.	Click here to enter text.
4.01 There is access to an approved watering source year-round.	Click here to enter text.	Click here to enter text.
4.01 Cattle drinking from natural water sources have access to a constructed/ restricted-access natural water source. <i>(Optional but highly encouraged)</i>	Click here to enter text.	Click here to enter text.
5.02 Producer harvests deer using disease control permits. <i>(Optional but highly encouraged)</i>	Click here to enter text.	Click here to enter text.
5.03 Waste or spoiled commodities are distributed to prevent wildlife congregation.	Click here to enter text.	Click here to enter text.
5.04 Producer is actively working to control small mammals on the farm. <i>(Optional but highly encouraged)</i>	Click here to enter text.	Click here to enter text.



STATE OF MICHIGAN PROCUREMENT
 Department of Technology, Management & Budget
 525 W. Allegan Street, Lansing, MI 48909
 1st Floor, NE

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **171-190000001001**

between

THE STATE OF MICHIGAN

and

CONTRACTOR	Acclaim Systems Inc.
	227 State Street
	Harrisburg, PA 17101
	John Kucek
	773-495-8307
	johnku@acclaimsystems.com
	VS0109497

STATE	Program Manager	Laura Brancheau	DTMB
		517-335-1334	
	BrancheauL@michigan.gov		
	Contract Administrator	Jarrod Barron	DTMB
517-249-0406			
BarronJ1@michigan.gov			

CONTRACT SUMMARY			
DESCRIPTION: MDARD USAHerds Maintenance and Enhancement Services			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
10/1/2019	10/1/2022	2 – 1 Year	10/1/2022
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45			
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
New Contract from ITN# 190000000055			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$148,750.00

FOR THE CONTRACTOR:

Company Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Jennifer Bronz – Category Manager, IT
Name & Title

DTMB – Central Procurement Services
Agency

Date



STATE OF MICHIGAN

IT PROFESSIONAL SERVICES

CONTRACT TERMS

This IT Professional Services Contract (the “**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Acclaim Systems Inc. (“**Contractor**”), a Pennsylvania corporation. This Contract is effective on October 1, 2019 (“**Effective Date**”), and unless terminated, expires on October 1, 2022 (the “**Term**”).

This Contract may be renewed for up to five (2) additional one (1) year periods. Renewal must be by written notice from the State and will automatically extend the Term of this Contract.

The parties agree as follows:

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

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

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

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

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

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

“**Contractor Personnel**” means all employees of Contractor or any Subcontractors involved in the performance of Services and creation of Deliverables under this Contract.

“**Deliverables**” means documentation, reports, and all other materials that Contractor or any Subcontractor 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.

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

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

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

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

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

“**Software**” means, collectively, the software applications and systems set forth in the Statement of Work and in **Schedule D**.

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

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

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

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

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

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

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

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

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

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

3. **Performance of Services.**

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

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

c. **State Standards**

i. The Contractor must adhere to all existing standards as described within the comprehensive listing of the State’s existing technology standards at https://www.michigan.gov/dtmb/0,5552,7-358-82547_56579_56755---,00.html

ii. To the extent that Contractor has access to the State’s computer system, Contractor must comply with the State’s Acceptable Use Policy, see http://www.michigan.gov/dtmb/0,5552,7-150-56355_56579_56755---,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.

d. **Contractor Personnel**

- i. Contractor is solely responsible for all Contractor Personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits.
- ii. Prior to any Contractor Personnel performing any Services, Contractor will:
 1. ensure that such Contractor Personnel have the legal right to work in the United States; and
 2. 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.
- iii. 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.
- iv. The State reserves the right to require the removal of any Contractor Personnel found, in the judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Replacement personnel for the removed person must be fully qualified for the position. If the State exercises this right, and Contractor cannot immediately replace the removed personnel, the State agrees to negotiate an equitable adjustment in schedule or other terms that may be affected by the State's required removal.
- e. **Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.

f. **Contractor's Key Personnel**

- i. The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State's Project Manager, and provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection.
- ii. Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("**Unauthorized Removal**"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key

Personnel's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under **Section 14**.

- iii. It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 14**, Contractor will issue to the State the corresponding credits set forth below (each, an "**Unauthorized Removal Credit**"):
 1. For the Unauthorized Removal of any Key Personnel designated in the Statement of Work, the credit amount will be \$25,000.00 per individual if Contractor identifies a replacement approved by the State and assigns the replacement to shadow the Key Personnel who is leaving for a period of at least 30 calendar days before the Key Personnel's removal.
 2. If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 calendar days, in addition to the \$25,000.00 credit specified above, Contractor will credit the State \$833.33 per calendar day for each day of the 30 calendar-day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000 maximum per individual. The total Unauthorized Removal Credits that may be assessed per Unauthorized Removal and failure to provide 30 calendar days of shadowing will not exceed \$50,000.00 per individual.
- iv. Contractor acknowledges and agrees that each of the Unauthorized Removal Credits assessed under **Subsection iii** above: (i) is a reasonable estimate of and compensation for the anticipated or actual harm to the State that may arise from the Unauthorized Removal, which would be impossible or very difficult to accurately estimate; and (ii) may, at the State's option, be credited or set off against any Fees or other charges payable to Contractor under this Contract.
- g. **Subcontractors.** Contractor will not, without the prior written approval of the State, which consent may be given or withheld in the State's sole discretion, engage any third party to perform Services (including to create any Deliverables). The State's approval of any such third party (each approved third party, a "**Subcontractor**") does not relieve Contractor of its representations, warranties or obligations under this Contract. Without limiting the foregoing, Contractor will:
 - i. be responsible and liable for the acts and omissions of each such Subcontractor (including such Subcontractor's employees who, to the extent providing Services or creating Deliverables, shall be deemed Contractor Personnel) to the same extent as if such acts or omissions were by Contractor or its employees;
 - ii. name the State a third-party beneficiary under Contractor's contract with each Subcontractor with respect to the Services and Deliverables;
 - iii. be responsible for all fees and expenses payable to, by or on behalf of each Subcontractor in connection with this Contract, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits; and
 - iv. prior to the provision of Services or creation of Deliverables by any Subcontractor, if requested by the State:

1. obtain from such Subcontractor confidentiality, work-for-hire and intellectual property rights assignment agreements, in form and substance acceptable by the State, giving the State rights consistent with those set forth in **Section 0** and, upon request, provide the State with a fully-executed copy of each such contract; and
 2. with respect to all Subcontractor employees providing Services or Deliverables, comply with its obligations under **subsection d** above.
4. **Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Contractor:
Jennifer Bronz 525 W. Allegan Street Lansing, MI 48909 BronzJ@michigan.gov 517-249-0493	<i>Rakesh Khetawat</i> 110 E. Pennsylvania Blvd Feasterville, PA 19053 rakeshk@acclaimsystems.com (215) 354-1422

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

State:	Contractor:
Jennifer Bronz 525 W. Allegan Street Lansing, MI 48909 BronzJ@michigan.gov 517-249-0493	<i>David P. Burgess</i> 403 N. 2 nd Street Harrisburg, PA 17101 (717) 441-0546

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

Insurance Type	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.
Umbrella or Excess Liability Insurance	
<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.
Automobile Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	
Workers' Compensation Insurance	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	
Privacy and Security Liability (Cyber Liability) Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.
Professional Liability (Errors and Omissions) Insurance	
<u>Minimal Limits:</u> \$3,000,000 Each Occurrence \$3,000,000 Annual Aggregate <u>Deductible Maximum:</u> \$50,000 Per Loss	

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

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 Business Days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

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

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

8. **Intellectual Property Rights**

a. Contractor does not acquire any ownership of Intellectual Property Rights in or to the Software as a result of this Contract.

b. Contractor hereby acknowledges that as between the State Contractor the State will be the owner of all right, title, and interest in the Services and Deliverables and all associated intellectual property rights, if any. Such Services and Deliverables are works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Services and Deliverables and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Services and Deliverables, including all intellectual property rights therein.

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

9. **Assignment.** Contractor may not assign this Contract to any other party without the prior written approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party.

10. **Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

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

11. **Acceptance.** Unless otherwise provided in the Statement of Work, this Section shall control acceptance of all Services and Deliverables. Services and Deliverables are subject to inspection and

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

Within 10 Business Days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Services or Deliverables, Contractor must cure, at no additional cost, the deficiency and deliver acceptable Services or Deliverables to the State. If acceptance with deficiencies or rejection of the Services or Deliverables impacts the content or delivery of other non-completed Services or Deliverables, the parties' must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the Statement of Work in whole or in part. The State, or a third party identified by the State, may perform the Services and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

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

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

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/SIGMAVSS> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment.

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

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

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

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in **Section 15**, Termination for Convenience.

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

15. **Termination for Convenience.** The State may immediately terminate this Contract, in whole or in part (including the Statement of Work), without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Services immediately, or (b) continue to perform the Services in accordance with **Section 16**, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.
16. **Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Services at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Services, training, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed Deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.
17. **General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or

damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; and (iii) employ its own counsel. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

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

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

19. Limitation of Liability. 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. 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.

20. State Data.

- a. Ownership. The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes the State's data collected, used, processed, stored, or generated as the result of the Services. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this Contract.
- b. Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Services. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Services, such use

and disclosure being in accordance with this Contract, the Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this Contract.

- c. Compromise of State Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) perform or take any other actions required to comply with applicable law as a result of the occurrence; (d) pay for any costs associated with the occurrence, including but not limited to any costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution; (e) pay for any costs associated with required notification and credit monitoring to affected individuals; and (f) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence. This Section survives termination or expiration of this Contract.

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

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

subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.

- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
 - d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or the Statement of Work corresponding to the breach or threatened breach.
 - e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or the Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party.
22. **HIPAA Compliance.** Contractor agrees to comply, and ensure its Personnel comply, with the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder ("HIPAA") and Subtitle D of the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) and any regulations promulgated thereunder with respect to the privacy and security of "protected health information" (as defined by HIPAA) accessed, created, transmitted, maintained or received by Contractor or its Personnel pursuant to, or in connection with, the performance of Contractor's or its Personnel's obligations under this Contract, including but not limited to entering into a Business Associate Agreement if required by law.
23. **Data Privacy and Information Security.** Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of State Data; (b) protect against any anticipated threats or hazards to the security or integrity of State Data; (c) protect against unauthorized disclosure, access to, or use of State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards, which are set forth in the Statement of Work.
24. **Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or

final payment under this Contract or any extension (“**Financial Audit Period**”). If an audit, litigation, or other action involving the records is initiated before the end of the Financial Audit Period, Contractor must retain the records until all issues are resolved.

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

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

25. **Warranties and Representations.** Contractor represents and warrants to the State that: (a) It will perform all Services in a professional and workmanlike manner in accordance with best industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications, and will devote adequate resources to meet its obligations under the Statement of Work; (b) the Services and Deliverables provided by Contractor will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (c) it has the full right, power, and authority to enter into this Contract, to grant the rights granted under this Contract, and to perform its contractual obligations; (d) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and (e) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under **Section 14**, Termination for Cause.
26. **Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Services in connection with this Contract.
27. **Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
28. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and Executive Directive [2019-09](#), Vendor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex (as defined in Executive Directive [2019-09](#)), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of the Contract.
29. **Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
30. **Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be

resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.

- 31. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Services from other sources.
- 32. **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
- 33. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Project Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 Business Days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 Business Days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.
- 34. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
- 35. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
- 36. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 37. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
- 38. **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	Pricing
Schedule C	Service Level Agreement
Schedule D	Usage Licensing Agreement for NATC Software

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

SCHEDULE A Statement of Work

1. PROJECT REQUEST

The State of Michigan (SOM), through the Department of Technology, Management & Budget (DTMB) and the Michigan Department of Agriculture and Rural Development (MDARD), has issued this for maintenance and enhancements to the USAHerds software application.

2. BACKGROUND

To address Michigan's unique challenge to manage and monitor the presence of Bovine Tuberculosis within selected areas of the State's cattle herds, the State installed the USAHerds software application ("Software") on January 4, 2010. USAHerds is a proprietary software copyrighted by the National Agribusiness Technology Center. For reference purposes, the software license for USAHerds software is attached as Schedule D.

This browser-based application incorporates an Electronic Identification program that enables MDARD and the United States Department of Agriculture (USDA) to capture and coordinate key demographic data associated with each animal, including PDA input from veterinarians and output from electronic readers located in each of the State's animal markets. The movement of all cattle is traceable and available from birth to final disposition – including relocations of each animal to other premises both within Michigan or to markets outside of Michigan. MDARD is participating in the project in concert with a consortium of States nationwide to leverage additional enhancements to the USAHerds livestock applications.

If the system experiences failure, MDARD would be unable to track cattle movements of over 15,000 herds and respond to other disease outbreaks such as Chronic Wasting Disease (CWD). The inability to track cattle movements would jeopardize Michigan's current split state TB status and restrict the ability of cattle farmers of all counties to move their stock to market. This would result in significant financial hardship for Michigan's cattle and dairy industries.

Currently the application does not provide some functionalities for captive Cervid tracking, nor does it allow for the scheduling of TB testing.

3. SPECIFIC STANDARDS

IT Policies, Standards and Procedures (PSP)

Contractors are advised that the State has methods, policies, standards and procedures that have been developed over the years. Contractors are expected to provide proposals that conform to State IT policies and standards. All services and products provided as a result of this RFP must comply with all applicable State IT policies and standards. Contractor is required to review all applicable links provided below and state compliance in their response.

IT Policies, Standards and Procedures (PSP): https://www.michigan.gov/dtmb/0,5552,7-358-82547_56579_56755---,00.html

Acceptable Use Policy

To the extent that Contractor has access to the State's computer system, Contractor must comply with the State's Acceptable Use Policy, see https://www.michigan.gov/documents/dtmb/1340.00.01_Acceptable_Use_of_Information_Technology_Standard_458958_7.pdf. All Contractor Personnel will be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State's system. The State reserves the right to terminate Contractor's access to the State's system if a violation occurs.

Look and Feel Standard

All software items provided by the Contractor must adhere to the State of Michigan Application/Site standards which can be found at www.michigan.gov/standards.

Mobile Responsiveness

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

ADA Compliance

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

http://www.michigan.gov/documents/dmb/1650.00_209567_7.pdf?20151026134621

Contractor is not responsible for any issues with the current application as it relates to ADA. Contractor will work to ensure all future enhancements are ADA compliant. If any existing features need to be made ADA compliant that would be an enhancement.

Agency Specific Technical Environment

The Contractor will comply with State of Michigan, Department of Technology, Management and Budget Development Standards, and United States Department of Agriculture (USDA) data standards, design rules and conventions.

The current server environment is as follows:

PROD Web server & QA/DR Web server are the following configuration

DTMB SQL and Application/Web servers are virtual servers

Current SQL Database Sizes:

USAHERDS: 20.611 BB

USAHERDS ATTACHMENT: 8.468 GB

USAHERDS HISTORY: 16.814 GB

USAHERDSReadOnly: 20.611 GB

4. SECURITY

On-Premise

Contractor is responsible for establishing and maintaining a data privacy and information security program within the application. The State of Michigan hosts the application within the state servers and will ensure state compliance while hosting the application for MDARD, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all Contractor personnel comply with all of the foregoing. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards, of which the publicly available ones are located at https://www.michigan.gov/dtmb/0,5552,7-358-82547_56579_56755---,00.html.

5. SERVICES IN SCOPE

(including identifying any associated cost in **Schedule C - Pricing**).

5.1 Software Maintenance

5.2 Application enhancements to the existing software, including:

1. Requirements validation
2. Software development and testing
3. Software integration
 - (1) Data conversion
 - (2) Data migration
 - (3) Configuration
 - (4) Customization
4. Software Implementation
5. Training
6. Use of other AgraGuard Products (USALIMS, USAPLANTS, USAFOODSAFETY and USAMEALS)

5.3 Out of Scope: Hardware installation, hardware maintenance, security administration within SOM's LAN/WAN networks and desktop support are out of scope for this Contract.

6. WORK AND DELIVERABLES

6.1 Software Maintenance

The Contractor must provide any and all services to maintain the existing USAHerds application at the State's request. This occurs in the form of a USAHerds support team available for two primary purposes:

- (1) Issues support (bugs, break/fix) telephone/email consultation, etc. Contractor will have remote access to the MDARD Development and Test technical environments for diagnostic support. Contractor will log all call and track them through resolution, with monthly reporting as described in **Section 13 Reports**.
- (2) (2) Software upgrades based on periodic releases of USAHerds available to all licensees. Acclaim will install software upgrade on the designated development environment and provide instructions for State staff to then move it to production.

Break/fixes as identified by State staff will be given priority over enhancement work. Additionally, Contractor must be responsible to provide ongoing software maintenance activities while system enhancements are in process for the duration of the Contract.

Contractor shall warrant that software updates will operate without error in production for ninety (90) days after implementation. Contractor shall correct any errors in production related to the software update during the warranty period at no additional charge.

6.2 Application enhancements to the existing software include:

1. General Services as Part of Enhancements:

Contractor must provide the following services to all software enhancements to be implemented under this Contract:

a. Requirements Validation

For future enhancements, the Contractor will verify and validate the functional requirements, the technical requirements provided by the State. This may include a review of the existing system and/or Joint Application Development (JAD) sessions with stakeholders to determine if all requirements have been fully documented.

b. Software Development Testing

Contractor must perform the following:

1. Design of the enhancements to address the specific functionality of the enhancements identified on this document as well as those identified through the JAD process.
2. Development of the enhancements including test plan and test scripts.
3. Load completed and tested system to Test environment with the assistance of DTMB web and database staff.
4. Testing of enhancements added to the system in test environment.
5. User Acceptance Testing

c. **Software Integration and Interface**

Contractor must provide integration and interface services to implement enhancements, including:

1. Data conversion
2. Data migration (mat include transition of business operations to the new application)
3. Software Configuration
4. Software Customization

d. **Software Implementation**

Contractor shall provide completed and tested software to DTMB and will assist DTMB in loading software into Production environment. Software must run free of errors for a period of 90 days before the State will make final acceptance on the enhancement.

e. **Training**

For all upgrades, new versions, and new future enhancements to the system. Contactor must provide both User and System Administration training as identified by State staff. Contractor must provide training for all changes that affect end-user functionality, a Change Log Flier overview will be provided to the state after each release (e.g. classroom or online training, training flier, release features, etc.)

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

Acceptance Criteria for All Enhancements

Deliverables will not be considered complete until the Agency Project Manager has fully accepted them. Once the Contractor submits the Deliverable to the State as complete, it will be reviewed by the DTMB Project Manager and the MDARD Project Coordinator to verify the provided Deliverable fulfills the task previously approved. If the Deliverable does not fulfill the task as understood by the DTMB Project Manager and MDARD Project Coordinator, the Contractor will make the modifications necessary to fulfill the task.

6.3 Requirements

Contractor must fully comply with each section in the **Schedule A – Statement of Work** and any future **Business Specifications Worksheet** as part of the Statement of Work.

Acclaim has obtained a current license from the NATC on behalf of the State (**Schedule B**), enabling us to proceed with modifying the source code.

The services must be provided in a .NET and XML-based platform. All other future business, technical, and functional requirements will be detailed in **Business Specification Worksheet**.

6.4 Testing Services and Acceptance Criteria

Acceptance is tied to Contractor's adequate performance of required services and/or delivery of the deliverables. Acceptance of any deliverables or services must be approved by the DTMB Project Manager. This review may be contingent upon acceptance of other stakeholders and the DTMB

Project Managers' designees. The state will provide written approval or rejection of the deliverable within a reasonable amount of time after delivery of such deliverables. If the deliverable is rejected by the State, the Contractor has 15 business days to resubmit the deliverable for approval.

Testing. The Department of Agriculture and Rural Development and DTMB will conduct User Acceptance Testing on all changes prior to implementation into production.

Final Acceptance. Final acceptance is expressly conditioned upon completion of ALL applicable tasks, deliverables/milestones. Contractor must submit monthly report illustrating tasks completed and milestones relevant to tasks underdevelopment.

7. SUPPORT AND OPERATIONS

Support-Hours

Contractor must provide services during normal working hours (Monday through Friday, 8:00 a.m. to 5:00 p.m. EST) and possible night and weekend hours depending on position and project requirements. No overtime will be authorized or paid. 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. Contractor shall observe the same standard holidays as State employees. The State does not compensate for holiday pay.

8. PROJECT PLAN MANAGEMENT

TRANSITIONS SERVICES:

Upon termination or expiration of the agreement, Contractor must, for a period of time specified by the State (not to exceed 180 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the agreement to continue without interruption or adverse effect, and to facilitate the orderly transfer of the services to the State or its designees. Such transition assistance may include but is not limited to: (a) continuing to perform the services at the established rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable services to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return (in a format specified by the State) to the State all data stored in the solution; and (d) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

TRANSITIONS IN:

ORIENTATING MEETING

1. Within two (2) business days from execution of the Contract, the Contractor will be required to attend an orientation meeting to discuss the content and procedures of MDARD USAHerds.
2. Within five (5) business days from execution of the Contract, the Contractor will be required to attend a project kickoff meeting to attend a USAHerds walk-through.

TRANSITION TASKS AND TIMELINES:

On-boarding of contractor staff to begin knowledge transfer is expected to start upon signed contract acceptance.

- Contract Execution + 2 business days –
 - The Contractor's Project Delivery Manager must meet with the DTMB Project Manager, DTMB Solution Architect, MDARD System Owner to:
 - Become familiar with the USAHerds processes, reports, and metrics
 - Gain a full understanding of the State's expectations regarding the level of cooperation and interaction between the State staff and the Contractor,
 - Become familiar with processes and services provided by DTMB staff and other DTMB contracts, and
- Contract Execution + 5 business days –

- Project Kickoff - The Contractor must conduct a Project Kickoff Meeting at a date and time mutually acceptable to the State and the Contractor. All Contractor's key personnel must attend the Project Kickoff Meeting.
 - Contractor's key personnel must attend a walkthrough of the USAHerds architecture provided by DTMB State staff.
 - Contractor's key personnel must attend a walkthrough provided by the MDARD staff of the business operations of MDARD Business and its role in, supporting, maintaining and enhancements of USAHerds.
- Contractor shall present an overview of the preliminary project plan including the project schedule, plans for submitting deliverables, plans for DTMB and MDARD review and approval of deliverables, plans for all transition activities, and other areas of coordination between Contractor and the State. Key DTMB, and MDARD staff will attend.
- Contract Execution + 30 business days –
 - During Month 1 of transition, the following must happen:
 1. The Contractor must begin to conduct formal bi-monthly status meetings (every other month) with the State.
 2. The Contractor project delivery manager shall attend all status meetings with the State and MDARD. The Contractor shall generate a Status Report as the basis for the status meeting. In the Status Report, the Contractor shall address:
 - a. Project schedule (current status of all tasks)
 - b. Near term activities
 - c.
 - d. Deliverables (submitted, due, overdue, approval status, and payment status)
 - e. Staffing (planned labor hours and actual labor hours)
 - f. Project risks (including mitigation strategy and status)
 - g. Quality assurance (tasks and status) (If asked to provide testing by the State)
 - h. Oversight of any subcontracts
 - i. Issues (log of identified issues with status of each)
 - j. Action items (log of items with status of each)
 - k. Other topics requested by the State
 3. The Contractor shall generate minutes for all status meetings and distribute the minutes via e-mail within two business days of the meeting for the State's review and approval.
 4. The Contractor key personnel shall begin attending the bi-monthly status meetings between the State and attend all team meetings.
- Contract Execution + 60 business days –
 - During Month 2, the following must happen:
 1. Contractor key personnel, supervisors, team leaders and appropriate technical staff will meet with MDARD business SMEs and the State staff to walk through all "work in progress" that will be assumed by the Contractor. The work in progress to be reviewed will include: in process or completed requirements for specific units of work; in process or completed functional designs for specific units of work; in process system designs for specific units of work.
- Contract Execution + 90 business days –
 - Successfully complete ten (10) business days of review, analysis, and solution recommendation for Support tickets selected by the State. The Contractor and the State will review and evaluate the recommended solutions.
 - Develop a detailed work plan for the activities that will be undertaken and completed during the first three months after Contract startup, including all assumed work in progress, and specifically addressing all items that

will be included in the first release of the system after the new Contract is signed.

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

The Contractor Project Delivery Manager will be responsible for ensuring all system upgrades are included and planned within defined releases.

Within three months of the Contract start, the Contractor must provide a roadmap for continued stabilization of the USAHerds environment that includes strategies for reducing the current backlog and the amount of incoming break fix tickets.

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

TRANSITIONS OUT:

Contractor must meet the requirements set forth in the above sub-section, “Transitions Services” and note any exceptions for successful implementation and ongoing support of the Solution.

DOCUMENTATION:

Contractor to utilize TeamWork environment to produce all project delivery elements.

9. CONTRACTOR KEY PERSONNEL

Contractor must identify all Contractor resources and responsibilities required for the successful maintenance and enhancements of the Solution.

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

Contractor
Name: David P Burgess Address: 403 N. 2nd Street, Harrisburg, PA, 17101 Phone: (717) 441-0546 Email: david@acclaimsystems.com

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

Contractor
Name: Yda Mitzy Torres Address: 2949 N. Front Street, Harrisburg PA Phone: (717) 441-0546 Email: mtorres@acclaimsystems.onmicrosoft.com

Contractor Lead Business Analyst. Contractor must identify the individual appointed by it to define and document business requirements and implement policies.

Contractor
Name: Yda Mitzy Torres Address: 2949 N. Front Street, Harrisburg PA Phone: (717) 441-0546 Email: mtorres@acclaimsystems.onmicrosoft.com

Contractor Security Officer. Contractor to provide name of individual to respond to State inquiries regarding the security of the Contractor's systems. This person must have sufficient knowledge of the security of the Contractor Systems and the authority to act on behalf of Contractor in matters pertaining thereto.

Contractor
Name: Dan Henrich Address: 2949 N. Front Street, Harrisburg, PA Phone: (717) 441-0546 Email: henrichd@acclaimsystems.onmicrosoft.com

10. CONTRACTOR PERSONNEL REQUIREMENTS

Contractor must present certifications evidencing satisfactory Michigan State Police Background checks ICHAT and drug tests for all staff identified for those who access to the State of Michigan environment.

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

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

Contractor staff will be subject to DTMB and MDARD rules for computer and Internet usage and will be required to sign an acceptable use agreement, as required of DTMB's and DTMB's own employees.

Onsite contractor staff accessing MDARD data must utilize state equipment exclusively. Contractor equipment or applications will not be used to access the State's network, unless specifically approved by the State. State email must be utilized for all communications with vendor.

SUBCONTRACTORS:

1. Contractor assumes full responsibility for the acts of all subcontractors.
2. Contractor may use subcontractors to fulfill requirements of the contract.
3. Contractor will provide confirmation of payment to subcontractors.
4. Contractor must provide a list of all subcontractors, including firm name, address, contact person, and a complete description of the work to be contracted. Include descriptive information concerning subcontractor's organization and abilities.
5. The Contractor will provide, and update when changed, an organizational chart indicating lines of authority for personnel involved in performance of this Contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management and indicate who within the firm will have prime responsibility and final authority for the work.
6. Contractor will ensure that staff exhibits professional conduct and act in the best interest of the State.

7. Contract staff will be required to meet the performance objectives identified for the State counterpart team members. The Contract staff will be provided with documented objectives and competencies they are required to maintain during their contract with the OA project.

11. STATE RESOURCES/RESPONSIBILITIES

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

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

The State Contract Administrator is:

Jarrod Barron, IT Category Specialist, DTMB - Central Procurement Services

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

The State Project Manager is:

Laura Brancheau – DTMB State Administrative Manager

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

The State Agency Business Owner is:

Amanda Budd – MDARD Animal Industry Division

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

The State Technical Lead is:

John Biretto, Business Analyst, DTMB – Agency Services

12. MEETINGS

The resulting awarded Contractor must attend the following meetings at no additional cost to the State.

PERFORMANCE REVIEW MEETINGS

1. The State will require the Contractor to attend monthly meetings, at a minimum, to review the Contractor's performance under the contract. During the transition period these meeting will be conducted weekly.
2. The meetings will be conducted virtually.

If Contractor has an alternative planned approach for project meetings provide details, including purpose, roles and responsibilities, and proposed frequency.

13. REPORTS

Once the Project Kick-Off meeting has occurred, the Contractor Project Manager will supply reports on a monthly basis to the State's Project Manager the following:

- Progress to complete milestones, comparing forecasted completion dates to planned and actual completion dates for maintenance and future enhancements
- Accomplishments during the reporting period
- Tasks planned for the next reporting period
- Identify any existing issues which are impacting releases and the steps being taken to address those issues
- Identify any new risks and describe progress in mitigating high impact/high probability risks previously identified
- any others listed in the requirements.

Contractor must describe specific reports the Contractor will provide after contract execution and during the lifecycle of the contract, including all required scheduled reporting and details around the how and when metrics are captured/validated.

14. PRICING

Contractor must provide in **Schedule C - Pricing** a detailed description of all costs associated with all requested services set forth in this Contract. Contractor is encouraged to provide tiered pricing discounts based on volume.

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

15. ADDITIONAL INFORMATION

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

SCHEDULE B
Pricing

Table 1: Software Maintenance and Support

Category	Not to Exceed Hourly Rate	Hours	Annual Maintenance & Support
Software Maintenance Annual Maintenance & Support	N/A	125	\$29,500.00

The State may purchase additional not-to-exceed maintenance hours as needed over the course of the contract.

Future Enhancements, Contractor Hourly Rates

Services must be provided at the Labor Rates (Not to Exceed Hourly Rate cost column). Additionally, the Contractor may utilize the rates in order to provide the State with a not to exceed fixed price. Contractor must provide hourly rates for all positions identified in the table below. Prices quoted herein will be used for change, addition, and / or deletion of work associated with this Contract.

Rate Card:

Contractor Resource	Hourly Rate
Project Manager	\$100.00
Senior Developer	\$90.00
Deployment	\$80.00
Quality Assurance Manager	\$85.00
Quality Assurance Tester	\$65.00
QA UAT Tester/Trainer	\$75.00
Tech. Writer	\$55.00
Business Analyst	\$75.00
Product SME	\$90.00
DBA	\$90.00

Notes:

1. Annual support and hourly rates quoted will not exceed 3% annually.

SCHEDULE C

Service Level Agreement

The parties agree as follows:

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

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

“Critical Service Error” has the meaning set forth in the Service Level Table.

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

“First Line Support” means the identification, diagnosis and correction of Errors by the State.

“High Service Error” has the meaning set forth in the Service Level Table.

“Low Service Error” has the meaning set forth in the Service Level Table.

“Medium Service Error” has the meaning set forth in the Service Level Table.

“Resolve” and the correlative terms, **“Resolved”**, **“Resolving”** and **“Resolution”** each have the meaning set forth in **Section 2.6**

“Service Credit” has the meaning set forth in **Section 0**

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

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

“Service Level Table” means the table set out in **Section 2.6**

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

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

“**Support Hours**” means Support Hours Support Hours (Other).

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

“**Support Request**” has the meaning set forth in **Section** Error! Reference source not found..

2. Maintenance.

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

2.2 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. Contractor shall provide the State, at no additional charge, adequate Documentation for installation of the Maintenance Release or New Version, which has been developed and tested by Contractor. 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.

Support Services. The State will provide First Line Support prior to making a Service Request for Second Line Support. Contractor shall perform all Second Line Support and other Support Services during the Support Hours throughout the Support Period in accordance with the terms and conditions of this Schedule and the Contract, including the Service Levels and other Contractor obligations set forth in this **Section 0**.

2.3 Support Service Responsibilities. Contractor shall:

- (a) provide unlimited telephone support during all Support Hours;
- (b) respond to and Resolve all Support Requests in accordance with the Service Levels;
- (c) provide unlimited remote Second Line Support to the State during all Support Hours;
- (d) provide to the State all such other services as may be necessary or useful to correct an Error or otherwise fulfill the Service Level requirements, including defect repair, programming corrections and remedial programming based on available support hours.

2.4 Support Requests. Once the State and Contractor has determined that an Error is not the result of a **State Cause**, the State may request Support Services by way of a Support Request. The State shall classify its requests for Error corrections in accordance with the support request classification and definitions of the Service Level Table set forth in **Section 2.4** (each a "**Support Request**"). The State shall notify Contractor of each Support Request by e-mail or telephone. The State shall include in each Support Request a description of the reported Error and the time the State first observed the Error.

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

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

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

Support Request Classification	Definition	Service Level Metric (Required Response Time)	Service Level Metric (Required Resolution Time)
Critical Service Error	(a) Issue affecting entire Software system or single critical production function; (b) Software down or operating in materially degraded state; (c) Data integrity at risk; (d) Material financial impact;	Contractor shall acknowledge receipt of a Support Request within thirty (30) minutes.	Contractor shall Resolve the Support Request as soon as practicable and no later than four (4) hours after Contractor's receipt of the Support Request. If the Contractor Resolves the Support Request by way of a work-around accepted in writing by the State, the support classification assessment will be

	<p>(e) Widespread access interruptions: or</p> <p>(f) Classified by the state as a Critical Service Error</p>		reduced to a High Service Error.
High Service Error	<p>(a) A Critical Service Error for which the State has received, within the Resolution time for Critical Service Errors, a work-around that the State has accepted in writing; or</p> <p>(b) Primary component failure that materially impairs Software's performance;</p> <p>(c) Data entry or access is materially impaired on a limited basis; or</p> <p>(d) performance issues of severe nature impacting critical processes</p>	Contractor shall acknowledge receipt of a Support Request or, where applicable, the State's written acceptance of a Critical Service Error work-around, within twenty-four (24) hours.	Contractor shall Resolve the Support Request as soon as practicable and no later than two (2) Business Days after Contractor's receipt of the Support Request or, where applicable, the State's written acceptance of a Critical Service Error work-around.
Medium Service Error	<p>An isolated or minor Error in the Software that meets any of the following requirements:</p> <p>(a) does not significantly affect Software functionality;</p> <p>(b) can or does impair or disable only certain non-essential</p>	Contractor shall acknowledge receipt of the Support Request within two (2) Business Days.	Contractor shall Resolve the Support Request as soon as practicable and no later than ten (10) Business Days after Contractor's receipt of the Support Request.

	Software functions; or (c) does not materially affect the State's use of the Software		
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2.7 Escalation to Parties' Project Managers. If Contractor does not respond to a Support Request within the relevant Service Level response time, the State may escalate the Support Request to the parties' respective Project Managers and then to their respective Contract Administrators.

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

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

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

3. Service Credits.

<u>Service Credit Amounts.</u> If the Contractor fails to respond to a Support Request within the applicable Service Level response time or to Resolve a Support Request within the applicable Service Level Resolution time, the State will be entitled to the corresponding service credits specified in the	<p style="text-align: center;">Service Level Credits</p> <p style="text-align: center;">(For Failure to Respond to any Support Request Within the Corresponding Response Time)</p>	<p style="text-align: center;">Service Level Credits</p> <p style="text-align: center;">(For Failure to Resolve any Support Request Within the Corresponding Required Resolution Time)</p>
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table below ("Service Credits"), provided that the relevant Error did not result from a State Cause. Support Request Classification		
Critical Service Error	An amount equal to 5% of the then current monthly Support Fee for each hour by which Contractor's response exceeds the required Response time.	An amount equal to 5% of the then current monthly Support Fee.
High Service Error	An amount equal to 3% of the then current monthly Support Fee for each Business Day, and a pro-rated share of such percentage for each part of a Business Day, by which Contractor's response exceeds the required Response time.	An amount equal to 3% of the then current monthly Support Fee

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

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

3.3 Additional Remedies for Service Level Failures. Contractor's repeated failure to meet the Service Levels for Resolution of any Critical Service Errors or High Service Errors, or any combination of such Errors, within the applicable Resolution time set out in the Service Level Table will constitute a material breach under the Contract. Without limiting the State's right to receive Service Credits under this **Section 3**, the State may terminate this Schedule for cause in accordance with terms of the Contract.

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

Schedule D
Usage Licensing Agreement for NATC Software

SOFTWARE USAGE LICENSE AGREEMENT NATC
AGRAGUARD SOFTWARE

This AGREEMENT, effective as of September 26, 2019 is by and between The National Agribusiness Technology Center, (hereinafter referred to as (“NATC”) having a place of business at 275 Cays Drive # 2206 Naples, FL 34114 and the Michigan Department of Agriculture and Rural Development (hereinafter referred to as (“CLIENT”) representing inclusion of all government agencies and their employees (both referred to herein collectively as “the Parties”).

WHEREAS, NATC desires to grant a license to the CLIENT from the NATC AgraGuard Software Suite for_USAHerds (SOFTWARE), hereinafter referred to as (SOFTWARE).

As outlined below; the Parties agree as follows:

1. GRANT OF USAGE LICENSE:

NATC grants the CLIENT a no fee, annual, non-exclusive, non-transferrable usage license for the SOFTWARE, with the following rights, provided that the CLIENT complies with all terms and conditions of this AGREEMENT.

- a. The CLIENT may not install the SOFTWARE on non-CLIENT owned computers.
- b. The CLIENT may only use the SOFTWARE on CLIENT owned computers, where SOFTWARE has been installed and configured by NATC, or its certified SOFTWARE solution providers on CLIENT owned computers, or a part of a hosted solution through NATC or one of NATC’s certified SOFTWARE solution providers.
- c. The non-exclusive, non-transferrable usage license granted by NATC for the SOFTWARE neither implies nor confers any CLIENT worldwide rights: to patents, copyrights, trademarks and trade secrets in, or relating to the SOFTWARE or SOFTWARE documentation.
- d. The CLIENT may not sell, license, grant rights of ownership or distribute copies of the SOFTWARE by itself or as part of any collection, product or service.
- e. The CLIENT may only make copies of the SOFTWARE for backup and archival purposes.
- f. The CLIENT may not translate, reverse engineer, decompile or disassemble the SOFTWARE to develop any other computer program for any other reason.
- g. The CLIENT may not use the SOFTWARE to process the data of any third party (whether on an outsourcing, service bureau, or other basis), redistribution, remarketing

or any other use.

2. LICENSE GRANT FOR DOCUMENTATION

Any documentation that accompanies the SOFTWARE is licensed for internal, non-commercial reference purposes only and may not be distributed to any non-CLIENT entity. Documentation shall mean all operator and user manuals, training materials, guides, listings, specifications and other materials, including online information and materials, relating to the use of the SOFTWARE delivered to the CLIENT, whether supplied in paper or digital form, in connection with this AGREEMENT.

3. INTERNET BASED SERVICES:

- a. CLIENT may not use any NATC internet-based services associated with the SOFTWARE in any manner that could damage, disable, overburden, or impair such services or interfere with any other party's use and enjoyment of them.
- b. CLIENT may not attempt to gain unauthorized access to any service, account, computer systems or networks associated with the Internet-based services.

4. RUNTIME SOFTWARE LIMITATIONS:

- a. The SOFTWARE may contain runtime software ("Runtime SOFTWARE"). Other than use with the SOFTWARE,
 - i. CLIENT may not use Runtime SOFTWARE with any other software application nor use Runtime SOFTWARE as part of any process or system that is used to automatically deliver, share or distribute documents or other work created using Runtime SOFTWARE unless the integration was specifically developed by a CERTIFIED SOFTWARE SOLUTION PROVIDER approved by the NATC. The CLIENT may request to the NATC to complete its own data extracts, system integration, or report; however, these activities must not impede on the runtime functionality, support, implementation and product upgrades of the AgraGuard solutions.

5. RESERVATION OF RIGHTS AND OWNERSHIP

- a. NATC reserves all rights not expressly granted to CLIENT in this AGREEMENT. The SOFTWARE is protected by intellectual property laws and treaties. NATC and/or its suppliers own the title and other intellectual property rights in the SOFTWARE.
- b. The SOFTWARE is licensed not sold. This AGREEMENT does not grant CLIENT any rights to trademarks or service marks of the NATC.
- c. NATC retains all rights, title and interest in and to the SOFTWARE and documentation in all

forms and all copies and modifications of the SOFTWARE and documentation, including all worldwide rights to patents, copyrights, trademarks and trade secrets in or relating to the SOFTWARE or documentation.

- d. Customer is not acquiring any right, title or interest of any nature whatsoever in any SOFTWARE or documentation except the license to use the SOFTWARE and documentation granted under this license.
- e. CLIENT GRANTS TO NATC AN UNENCUMBERED LICENSE TO ANY ENHANCEMENTS TO THE SOFTWARE WHICH CLIENT HAS INTELLECTUAL PROPERTY RIGHTS. IN RETURN, CLIENT HAS RIGHTS TO ACCEPT AND USE ALL ENHANCEMENTS NATC RECEIVES FROM OTHER CUSTOMERS UNDER OTHER LICENCE AGREEMENTS AS THEY BECOME AVAILABLE AS PART OF THE REGULARLY SCHEDULED UPDATES AND ENHANCEMENTS.
- f. SOFTWARE enhancements: The NATC shall have in perpetuity, on behalf of its collective licensees sole and exclusive rights and authority to provide secure repository, custodial, coordination, ministerial, administrative and management services for all SOFTWARE code and SOFTWARE enhancements and other intellectual property/intellectual assets (IP/IA) which have been received from individual users under the terms of an NATC license agreement.
- g. The NATC as the sole custodian and administrator of the SOFTWARE enhancements shall retain no rights of ownership to the SOFTWARE enhancements and other IP/IA which have been received from individual users under the terms of an NATC license agreement. The NATC shall exclusively perform all ministerial functions as custodian and administrator, performing all functions on behalf of all licensed users in perpetuity and shall protect, maintain and cause all SOFTWARE enhancements to be made available to all users who are eligible to receive them under the terms of this license AGREEMENT at the next regularly scheduled update or software enhancement. The NATC shall upon acceptance of the upgrade, integration and stabilization of the upgrade in a production environment then implement release to all eligible clients. The NATC shall provide sole and exclusive repository, ministerial custodial and management services of the SOFTWARE on behalf of all eligible clients.

6. LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION, AND DISASSEMBLY:

CLIENT may not reverse engineer, decompile, or disassemble the SOFTWARE, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

7. COMMERCIAL HOSTING:

CLIENT may not provide commercial hosting services with the SOFTWARE. The CLIENT may subscribe to a hosted solution only through NATC or one of NATC's certified hosting solution providers.

8. CONSENT TO USE OF DATA:

CLIENT agrees that NATC and its affiliates may collect and use technical information gathered as part of the product support services provided to CLIENT, if any, related to the SOFTWARE. NATC may use this information solely to improve its products or to provide customized services or technologies to CLIENT.

9. LINKS TO THIRD PARTY SITES:

NATC is not responsible for the contents of any third-party sites or services, any links contained in third-party sites or services, or any changes or updates to third-party sites or services. NATC is providing these links and access to third-party sites and services to CLIENT only as a convenience, and the inclusion of any link or access does not imply an endorsement by NATC of the third-party site or service.

10. PROPRIETARY LEGENDS:

The CLIENT must retain all legends relating to copyright, trademarks, patents or confidentiality on all copies of the SOFTWARE and documentation, and CLIENT must reproduce such notices on any copies of the SOFTWARE and the documentation or any portion of the SOFTWARE or documentation.

11. SOFTWARE MAINTENANCE:

IN ORDER TO BE ELIBIBLE FOR SOFTWARE MAINTENANCE. WHICH INCLUDES SOFTWARE UPDATES. THE CLIENT MUST BE UNDER CURRENT CONTRACT FOR A MAINTENANCE AGREEMENT WITH A NATC-APPROVED

VENDOR. The terms of this AGREEMENT shall apply to all updates, supplements, add-on components, or Internet-based services components of the SOFTWARE that NATC may provide to CLIENT or make available to CLIENT after the date CLIENT first obtained the SOFTWARE, unless they are accompanied by separate terms. NATC reserves the right to discontinue Internet- based services provided to CLIENT or made available to CILENT through the use of the SOFTWARE.

12. UPGRADES:

To use SOFTWARE identified as an upgrade, CLIENT must first be licensed for the software identified by NATC as eligible for the upgrade. After installing the upgrade, and successfully

stabilizing the upgrade in a production environment, CLIENT may no longer use the original software that formed the basis for CLIENT upgrade eligibility, except as part of the upgraded software.

13. SEPARATION OF COMPONENTS:

The SOFTWARE is licensed as a single product. Its component parts may not be separated for use on more than one device.

14. RECORDS:

Customer must maintain records identifying the location of any copies of the SOFTWARE (including any backup and recovery or archival copies), which records will be subject to inspection by NATC (or its agents) during regular business hours upon reasonable advance notice. NATC or its agents may, upon reasonable notice to CLIENT, enter CLIENT'S premises and inspect CLIENT'S records and systems for purposes of determining CLIENT'S compliance with the terms of this AGREEMENT.

15. TERMINATION:

Without prejudice to any other rights, NATC may terminate this AGREEMENT if CLIENT fails to comply with the terms and conditions of this AGREEMENT. In such event, CLIENT must destroy all copies of the SOFTWARE and all of its component parts.

16. CUSTOMER ENVIRONMENT:

The CLIENT assumes sole responsibility for the environment that the SOFTWARE shall be installed into, including:

- a. Obtaining any software required for use of the SOFTWARE, including any operating system software, database software, or third party applications software.
- b. Any hardware and firmware required for use of the SOFTWARE, including storage, memory, communication, and ancillary devices.
- c. Taking reasonable backup precautions.
- d. Determining that the SOFTWARE meets the specifications and will satisfy the requirements for which CLIENT is licensing the SOFTWARE.

NATC will not be responsible for loss of data or documentation, whether or not attributable to the SOFTWARE.

17. NO WARRANTY:

The SOFTWARE comes as is with no warranty. There is no guarantee that it will work on CLIENT systems or in CLIENT environment. Any supplements or updates to the SOFTWARE, including without

limitation, any (if any) service packs or hot fixes provided to CLIENT are not covered by any warranty or condition, express, implied or statutory.

18. APPLICABLE LAW:

This AGREEMENT is governed by the laws of the State of Michigan.

19. ENTIRE AGREEMENT; SEVERABILITY:

This AGREEMENT is the entire agreement between CLIENT and NATC relating to the SOFTWARE and supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the SOFTWARE or any other subject matter covered by this AGREEMENT. To the extent the terms of any NATC policies or programs for support services conflict with the terms of this AGREEMENT, the terms of this AGREEMENT shall control. If any provision of this AGREEMENT is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect.

20. EXCLUSION OF ALL OTHER TERMS:

To the maximum extent permitted by applicable law, NATC disclaims all warranties, conditions and other terms, either express or implied (whether by statute, common law, collaterally or otherwise) including but not limited to implied warranties of satisfactory quality and fitness for particular purpose with respect to the SOFTWARE and the written materials that accompany the

SOFTWARE. Any implied warranties that cannot be excluded are limited to 90 days or to the shortest period permitted by applicable law, whichever is greater.

21. LIMITATION OF LIABILITY:

The NATC and its suppliers shall not be liable for any consequential damages whatsoever (including without limitation, damages for loss of business profits, business interruption, loss of business information or other pecuniary loss) arising out of the use or inability to use the SOFTWARE, even if NATC has been advised of the possibility of such damages. In any case NATC's entire liability under any provision of this AGREEMENT shall be limited to the amount actually paid by CLIENT to the NATC for the SOFTWARE.

22. ESCROW:

NATC retains a current copy of all AgraGuard source code, thereby serving as a de-facto escrow agent for all licensees. In the event NATC shall cease to function as a company and become legally dissolved, NATC will provide reasonable notice to the licensee and facilitate immediate access necessary to provide all NATC proprietary software applicable to the operation, development and maintenance of the licensed AgraGuard component.

IN WITNESS WHEREOF, the Parties hereto have, through duly authorized representatives, executed this AGREEMENT effective as of the day, month and year set forth above.

The National Agribusiness Technology Center

STATE

By: _____

By: _____

Name: Dr. R. Frank Lee

Name: Jennifer Bronz

Title: President

Title: Category Manger – IT

Date: _

Date: _