



STATE OF MICHIGAN PROCUREMENT

Department of Technology, Management, and Budget
 320 S. Walnut Street 2nd Floor Lansing, MI 48933
 PO BOX 30026 Lansing, MI 48909

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **250000000719**

between
 THE STATE OF MICHIGAN
 and

CONTRACTOR	Electric Edge Systems Group, Inc (EESG)
	Bryan Stevenson
	250-920-8830
	bryan@electricedgesystems.com
	VC0021095

STATE	Program Manager	Multiple	Multiple
	Contract Administrator	Angela Wright 517-899-4646 WrightA33@michigan.gov	DTMB

CONTRACT SUMMARY			
DESCRIPTION: Department of Natural Resources (DNR) – Fishing Activity and Catch Tracking System (FACTS) Maintenance and Operations			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
11/15/2025	11/14/2030	5 – 1 Year Options	11/14/2030
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
THIS IS NOT AN ORDER. This Contract Agreement is awarded on the basis of the State’s inquiry bearing the solicitation number ITN – 250000000017. Orders for Delivery will be issued directly by the Departments through the issuance of a Delivery Order.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION		\$1,090,959.00	

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

AGENCY	NAME	PHONE	EMAIL
DNR	Kim Marton	517-388-6763	MartonK@michigan.gov
DNR	Tracy Claramunt	231-330-9132	ClaramuntT@michigan.gov
DTMB	Laura Brancheau	517-618-9646	BrancheauL@michigan.gov

FOR THE CONTRACTOR:

Company Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Name & Title

Agency

Date

SOFTWARE CONTRACT TERMS AND CONDITIONS

These Terms and Conditions, together with all Schedules (including the Statement(s) of Work), Exhibits and any other applicable attachments or addenda (Collectively this “Contract”) are agreed to between the State of Michigan (the “**State**”) and Electric Edge Systems Group, Inc. (“**Contractor**”), incorporated in Victoria, British Columbia, Canada. This Contract is effective on 11/01/2025 (“**Effective Date**”), and unless terminated, will expire on 10/31/2030 (the “**Term**”).

This Contract may be renewed for up to 5 additional, 1- year period(s). Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via a Change Notice.

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

“**Acceptance**” has the meaning set forth in **Section 9**.

“**Acceptance Tests**” means such tests as may be conducted in as described in **Section 9** and any applicable Statement of Work to determine whether the Software meets the requirements of this Contract and the Documentation.

“**Access**” means (1) the ability and means to enter a restricted or locked area, room, or physical container containing State Data; or (2) the ability and means to communicate with or otherwise interact with a system, to use system resources to handle information, to gain the information or knowledge of the information the system contains, or to control system components and functions (including physical or technical controls, or having the ability to modify or bypass any or all security controls).

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

“**Allegedly Infringing Materials**” has the meaning set forth in **Section 18**.

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

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

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

“**Change Notice**” means a writing executed by the parties to the Contract memorializing a change to the Contract.

“**Change Proposal**” has the meaning set forth in Subsection 2.2.

“**Change Request**” has the meaning set forth in Subsection 2.2.

“**Confidential Information**” has the meaning set forth in Subsection 22.1.

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

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

“**Contract Change**” has the meaning set forth in Subsection 2.2.

“**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 Schedule A or subsequent Change Notices.

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

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

“**Contractor Hosted**” means the Hosted Services and the Operating Environment are provided by Contractor or one or more of its Permitted Subcontractors.

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

“**Contractor Project Manager**” means the individual appointed by Contractor and identified in Schedule A or subsequent Change Notices to serve as the primary contact, to monitor and coordinate the day-to-day activities of this Contract, and to perform other duties as may be further defined in this Contract, including an applicable Statement of Work.

“**Customization**” means State-specific changes to the Software's underlying Source Code or structural data model changes.

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

“**Deposit Material**” refers to material required to be deposited pursuant to **Section 28**.

“**Digital Accessibility Standards**” means the accessibility standards provided in the SOM Digital Standards, located at <https://www.michigan.gov/standards>.

“**Disaster Recovery Plan**” refers to the set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations and to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives.

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

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

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

“**Fees**” means the fees set forth in the Pricing Schedule attached as **Schedule B**.

“**Financial Audit Period**” has the meaning set forth in Subsection 23.1.

“**Hardware**” means any computer hardware or other equipment provided by Contractor under this Contract, if any, including but not limited to any related accessories.

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

“**Hosted Services**” means the hosting, management and operation of the: Operating Environment, Software, other services (including support and subcontracted services), and related resources for access and use by the State and its Authorized Users, including any services and facilities related to disaster recovery obligations.

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

“**Integration Testing**” has the meaning set forth in Section 9.

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

“**Key Personnel**” means any Contractor Personnel identified as key personnel in the Contract.

“**Loss or Losses**” means all losses, including but not limited to, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“**Maintenance Release**” means any update, upgrade, release or other adaptation or modification of the Software, including any updated Documentation, that Contractor may generally provide to its licensees from time to time during the Term, which may contain, among other things, error

corrections, enhancements, improvements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the Software.

“Milestone” means an event or task described in the Implementation Plan under a Statement of Work that must be completed by the corresponding Milestone Date.

“Milestone Date” means the date by which a particular Milestone must be completed as set forth in the Implementation Plan under a Statement of Work.

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

“Nonconformity” or **“Nonconformities”** means any failure or failures of a Deliverable, to conform to the requirements of this Contract.

“Offshore Resources” mean resources, including Contractor Personnel, outside of the United States or its territories.

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

“Operating Environment” means, collectively, the platform, environment and conditions on, in or under which the Software is intended to be installed and operate, as set forth in a Statement of Work, including such structural, functional and other features, conditions and components as hardware, operating software, system architecture, configuration, computing hardware, ancillary equipment, networking, software, firmware, databases, data, and electronic systems (including database management systems).

“PAT” Means a document or product accessibility template, including any Information Technology Industry Council Voluntary Product Accessibility Template or VPAT®, that specifies how information and software products, such as websites, applications, software and associated content, conform to the Digital Accessibility Standards.

“Permitted Subcontractor” means any third party hired by Contractor to perform Services for the State under this Contract or that will have Access to or have the ability to control access to State Data or both.

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

“Pricing Schedule” means the schedule attached as **Schedule B**.

“Process” means to perform any operation or set of operations on any data, information, material, work, expression or other content, including to (a) collect, receive, input, upload, download, record, reproduce, store, organize, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other improvements or derivative works, (b) process, retrieve,

output, consult, use, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or (c) block, erase or destroy. **“Processing”** and **“Processed”** have correlative meanings.

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

“Services” means any of the services, including but not limited to, Hosted Services, installation, configuration, implementation, and/or Support Services, that the Contractor is required to or otherwise does provide under this Contract.

“Service Level Agreement” means the schedule attached as **Schedule D**, setting forth the Support Services Contractor will provide to the State, and the parties' additional rights and obligations with respect thereto.

“Site” means any physical location(s) designated by the State in, or in accordance with, this Contract or a Statement of Work for delivery and installation of the Deliverable, if applicable.

“Software” means Contractor's software as set forth in a Statement of Work, and any Third-Party Components, Maintenance Releases or New Versions provided to the State and any Customizations or Configurations made by or for the State pursuant to this Contract, and all copies of the foregoing permitted under this Contract. If Contractor Hosted, Software includes Contractor's Operating Environment.

“Solicitation” means the State's request to solicit responses for a Solution under this Contract.

“Solution” means Deliverables and Services singularly or in any combination thereof, as applicable, set forth in a Statement of Work.

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

“Specifications” means, for the Software, the specifications collectively set forth in the Business Requirements Specification, Technical Specification, Documentation, Solicitation or Contractor's Bid Response, if any, for such Software, or elsewhere in a Statement of Work.

“State” means the State of Michigan.

“State Data” has the meaning set forth in **Section 21**.

“State Hosted” means the Operating Environment is not provided by Contractor or one or more of its Permitted Subcontractors.

“State Materials” means all materials and information, including but not limited to documents, data, know-how, ideas, methodologies, specifications, software, hardware, content and technology, in any form or media, directly or indirectly provided or made available to Contractor by or on behalf of the State in connection with this Contract.

“**State Program Managers**” are the individuals appointed by the State, or their designees, to (a) monitor and coordinate the day-to-day activities of this Contract; (b) co-sign off on Acceptance of the Deliverables; and (c) perform other duties as may be specified in a Statement of Work. Program Managers will be identified in Schedule A or subsequent Change Notices.

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

“**Statement of Work**” means any statement of work entered into by the parties and incorporated into this Contract. The initial Statement of Work is attached as **Schedule A**.

“**Stop Work Order**” has the meaning set forth in **Section 15**.

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

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

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

“**Testing Period**” has the meaning set forth in **Section 9**.

“**Third-Party Components**” means all components, including Open-Source Components, that are included in or used in connection with the Software and are specifically identified by Contractor in the Contractor’s Software Bill of Materials, in an applicable Statement of Work or elsewhere in this Contract, or as otherwise required by this Contract, including without limitation as part of the State’s Security Accreditation Process defined in Schedule E – Data Security Requirements.

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

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

“**Unauthorized Removal**” has the meaning set forth in Subsection 2.5.

“**Unauthorized Removal Credit**” has the meaning set forth in Subsection 2.5.

“**User Data**” means all data, queries, prompts, information and other content of any type and in any format, medium or form, whether audio, visual, digital, screen, GUI or other, that is input, uploaded to, placed into or collected, stored, Processed, generated or output by any user, device, system or network by or on behalf of the State, including but not limited to any and all works, inventions, data, analyses, information that identifies State or State’s intended users’ devices or equipment, location information, or other information and materials resulting from any use of the Software by or on behalf of the State’s intended users under this Contract, even if not input by a user. User Data does not include any data in the possession of or collected by Contractor prior to or independently of the performance of the Services or any use of the Software under this Contract.

“**Warranty Period**” means the 90 calendar-day period commencing on the date of the State’s Acceptance of the Software for which Support Services are provided free of charge.

“**Work Product**” means everything made or created by Contractor, regardless of whether created, developed, or generated by a human, non-human, or some combination thereof, specifically and

solely for the State and which is not generally available to Contactor's other customers, that Contactor is required to, or otherwise does, provide to the State under this Contract including but not limited to Customizations, application programming interfaces, computer scripts, macros, user interfaces, reports, project management documents, forms, templates, and other State-specific documents and related materials together with all ideas, concepts, processes, and methodologies developed in connection with this Contract whether or not embodied in this Contract.

2. Duties of Contractor. Contractor will provide the Solution pursuant to Statement(s) of Work entered into under this Contract. Contractor will provide the Solution in a timely, professional manner and in accordance with the terms, conditions, and Specifications set forth in this Contract and the Statement(s) of Work.

2.1 Statement of Work Requirements. No Statement of Work will be effective unless signed by each party's Contract Administrator. The term of each Statement of Work will commence on the parties' full execution of a Statement of Work and terminate when the parties have fully performed their obligations. The terms and conditions of this Contract will apply at all times to any Statements of Work entered into by the parties and incorporated into this Contract. The State will have the right to terminate such Statement of Work as set forth in **Section 16**. Contractor acknowledges that time is of the essence with respect to Contactor's obligations under each Statement of Work and agrees that prompt and timely performance of all such obligations in accordance with this Contract and the Statements of Work (including the Implementation Plan and all Milestone Dates) is strictly required.

2.2 Change Control Process. The State may at any time request in writing (each, a "**Change Request**") changes to the Contract, including without limitation changes to the Solution or adding a new Statement of Work (each, a "**Contract Change**"). Upon the State's submission of a Change Request, the parties will evaluate and implement all Contract Changes in accordance with this Section.

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

(i) a written description of the proposed Contract Changes to any part of the Solution;

(ii) an amended Implementation Plan reflecting: (A) the schedule for commencing and completing any addition or modification to the Solution; and (B) the effect of such Contract Changes, if any, on completing any other Services under a Statement of Work;

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

(iv) any increase or decrease in Fees resulting from the proposed Contract Changes, which increase, or decrease will reflect only the increase or

decrease in time and expenses Contractor requires to carry out the Contract Change.

(b) Within 30 Business Days following the State's receipt of a Change Proposal, the State will by written notice to Contractor, approve, reject, or propose modifications to such Change Proposal. If the State proposes modifications, Contractor must modify and re-deliver the Change Proposal reflecting such modifications, or notify the State of any disagreement, in which event the parties will negotiate in good faith to resolve their disagreement. Upon the State's approval of the Change Proposal or the parties' agreement on all proposed modifications each parties' Contractor Administrator will sign a Change Notice.,

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

(i) require Contractor to perform or provide the Solution under the existing Statement of Work without the Contract Change;

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

(iii) initiate a Dispute Resolution Procedure; or

(iv) notwithstanding any provision to the contrary in a Statement of Work, terminate this Contract under **Subsection 16.1**.

(d) No Contract Change will be effective until the parties have executed a Change Notice. Notwithstanding the foregoing, no Change Notice executed after the Effective Date will be construed to amend or modify this Contract in any way, unless it specifically states its intent to do so and cites the section or sections amended. Except as the State may request in its Change Request or otherwise in writing, Contractor must continue to perform its obligations in accordance with a Statement of Work pending negotiation and execution of a Change Notice. Contractor will use its best efforts to limit any delays or Fee increases from any Contract Change to those necessary to perform the Contract Change in accordance with the applicable Change Notice. Each party is responsible for its own costs and expenses of preparing, evaluating, negotiating, and otherwise processing any Change Request, Change Proposal, and Change Notice.

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

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

2.3 Contractor Personnel.

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

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

(i) ensure that such Contractor Personnel have the legal right to work in the United States or Canada, as applicable;

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

(iii) upon request, or as otherwise specified in a Statement of Work, perform background checks on all Contractor Personnel prior to their assignment. Contractor will not be required to provide the actual results of any such background checks to State. Contractor agrees that Contractor will not, without written consent, knowingly use Contractor Personnel with criminal convictions to provide Services under this Contract. Contractor is responsible for all costs associated with the requested background checks.

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

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

2.4 Contractor Project Manager. Throughout the Term of this Contract, Contractor must maintain a Contractor employee acceptable to the State to serve as Contractor Project Manager, who will be considered Key Personnel of Contractor.

(a) Contractor Project Manager must:

- (i) have the requisite authority, and necessary skill, experience, and qualifications, to perform in such capacity;
- (ii) be responsible for overall management and supervision of Contractor's performance under this Contract; and
- (iii) be the State's primary point of contact for communications with respect to this Contract, including with respect to giving and receiving all day-to-day approvals and consents.

(b) Contractor Project Manager must attend all regularly scheduled meetings as set forth in the Implementation Plan and will otherwise be available as set forth in a Statement of Work.

(c) Contractor will maintain the same Contractor Project Manager throughout the Term of this Contract, unless:

- (i) the State requests in writing the removal of Contractor Project Manager; or
- (ii) the State consents in writing to any removal requested by Contractor in writing; or
- (iii) the Contractor Project Manager ceases to be employed by Contractor, whether by resignation, involuntary termination or otherwise.

(d) Upon the occurrence of any event set forth in **Subsections 2.4(c)(i-iii)** above, Contractor will promptly replace its Contractor Project Manager. Such replacement will be subject to the State's prior written approval.

2.5 Contractor's Key Personnel.

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

(b) Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("**Unauthorized Removal**"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Any

Unauthorized Removal may be considered by the State to be a material breach of this Contract.

(c) It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to determine and remedy 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 16**, Contractor will issue to the State an amount equal to \$25,000 per individual (each, an “**Unauthorized Removal Credit**”).

(d) Contractor acknowledges and agrees that each of the Unauthorized Removal Credits assessed under **Subsection 2.5(c)** above: (i) is a reasonable estimate of and compensation for the anticipated or actual harm to the State that may arise from the Unauthorized Removal, which would be impossible or very difficult to accurately estimate; and (ii) may, at the State’s option, be credited or set off against any Fees or other charges payable to Contractor under this Contract.

2.6 Subcontractors. Contractor must obtain prior written approval of the State, which consent may be given or withheld in the State’s sole discretion, before engaging any Permitted Subcontractor to provide Services to the State under this Contract. Engagement of any subcontractor or Permitted Subcontractor by Contractor does not relieve Contractor of its representations, warranties or obligations under this Contract. Without limiting the foregoing, Contractor will:

- (a) be responsible and liable for the acts and omissions of each such subcontractor (including such Permitted Subcontractor and Permitted Subcontractor's employees who, to the extent providing the Solution, will be deemed Contractor Personnel) to the same extent as if such acts or omissions were by Contractor or its employees;
- (b) be responsible for all fees and expenses payable to, by or on behalf of each subcontractor and Permitted Subcontractor in connection with this Contract, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits; and
- (c) notify the State of the location of the Permitted Subcontractor and indicate if it is located within the United States.

3. 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 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:
Angela Wright 320 S. Walnut Street	Bryan Stevenson 3016 Orillia Street

Lansing, MI 48909 WrightA33@michigan.gov 517-899-4646	Victoria, BC, V9A 1Y8bryan@electricedgesystems.com 250-920-8830
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4. Insurance. Contractor must maintain the minimum insurances identified in the Insurance Schedule attached as **Schedule C**.

5. Terms of Use of the Software.

5.1 Subscription License.

During the Term and such additional periods, if any, the State may:

- (a) access and use the Software, including in operation with other software, hardware, systems, networks and services, for the State’s governmental purposes, including for Processing State Data;
- (b) generate, print, copy, upload, download, store and otherwise Process all GUI, audio, visual, digital and other output, displays and other content as may result from any access to or use of the Software;
- (c) prepare, reproduce, print, download and use a reasonable number of copies of the Specifications and Documentation for any use of the Software under this Contract; and
- (d) access and use the Software for all such non-production uses and applications as may be necessary or useful for the effective use of the Software hereunder, including for purposes of analysis, development, configuration, integration, testing, training, maintenance, support and repair, which access and use will be without charge and not included for any purpose in any calculation of the State’s or its Authorized Users’ use of the Software, including for purposes of assessing any Fees or other consideration payable to Contractor or determining any excess use of the Software as described in **Subsection 5.4** below.

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

5.3 Fees. The State will pay Contractor the corresponding Fees set forth in a Statement of Work or Pricing Schedule for all Authorized Users access and use of the Software. Such Fees will be Contractor’s sole and exclusive remedy for use of the Software, including any excess use.

5.4 Certification. To the extent that a License granted to the State is not unlimited, Contractor may request written certification from the State regarding use of the Software for the sole purpose of verifying compliance with this **Section**. Such written certification

may occur no more than once in any 24 month period during the Term of the Contract. The State will respond to any such request within 45 calendar days of receipt. If the State's use is greater than contracted, Contractor may invoice the State for any unlicensed use (and related support) pursuant to the terms of this Contract at the rates set forth in **Schedule B**, and the unpaid license and support fees shall be payable in accordance with the terms of the Contract. Payment under this provision shall be Contractor's sole and exclusive remedy to cure these issues.

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

6. Third-Party Components. At least 30 days prior to adding new third-party components, Contractor will provide the State with notification information identifying and describing the addition. Throughout the Term, on an annual basis, Contractor will provide updated information identifying and describing any third-party components included in the Software. Contractor is responsible for ensuring that all Third-Party Components are properly licensed for the State's use.

7. Intellectual Property Rights

7.1 Ownership Rights in Software

(a) For purposes of this **Section 7** only, the term "Software" does not include Customizations.

(b) Subject to the rights and licenses granted by Contractor in this Contract and the provisions of **Subsection 7.1(c)**:

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

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

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

7.2 The State is and will be the sole and exclusive owner of all right, title, and interest in and to all Work Product created, developed, or generated exclusively for the State under this Contract, including all Intellectual Property Rights. In furtherance of the foregoing:

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

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

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

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

8. Software Implementation.

8.1 Implementation. Contractor will as applicable; deliver, install, configure, integrate, and otherwise provide and make fully operational the Software on or prior to any applicable Milestone Date in accordance with criteria set forth in any applicable Statement of Work and the Implementation Plan.

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

9. Software Acceptance Testing.

9.1 Acceptance Testing.

(a) Unless otherwise specified in a Statement of Work, upon installation of the Software, or in the case of Contractor Hosted Software, when Contractor notifies the State in writing that the Solution is ready for use, Acceptance Tests will be conducted as set forth in this **Section 9** to ensure the Software conforms to the requirements of this Contract, including the applicable Specifications and Documentation.

(b) All Acceptance Tests will take place at the designated Site(s) in the Operating Environment described in a Statement of Work, commence on the Business Day following installation of the Software, or the receipt by the State of the notification referenced in **Subsection 9.1(a)**, and be conducted diligently for up to 30 Business Days, or such other period as may be set forth in a Statement of Work (the “**Testing Period**”). Acceptance Tests will be conducted by the party responsible as set forth in a Statement of Work or, if a Statement of Work does not specify, the State, provided that:

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

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

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

(a) Upon delivery and installation of any application programming interfaces, Configuration or Customizations, or any other applicable Work Product, to the Software under a Statement of Work, additional Acceptance Tests will be performed on the modified Software as a whole to ensure full operability, integration, and compatibility among all elements of the Software ("**Integration Testing**"). Integration Testing is subject to all procedural and other terms and conditions set forth in this **Section**.

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

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

(a) If such notice is provided by either party and identifies any Nonconformities, the parties' rights, remedies, and obligations will be as set forth in **Subsection 9.4** and **Subsection 9.5**.

(b) If such notice is provided by the State, is signed by the State Program Managers or their designees, and identifies no Nonconformities, such notice constitutes the State's Acceptance of such Software.

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

(i) notify Contractor in writing of Nonconformities the State has observed in the Software and of the State's non-acceptance thereof, whereupon the parties' rights, remedies and obligations will be as set forth in **Subsection 9.4** and **Subsection 9.5**; or

(ii) provide Contractor with a written notice of its Acceptance of such Software, which must be signed by the State Program Managers or their designees.

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

- (a) completion of such Acceptance Tests, in the case of Acceptance Tests conducted by Contractor; or
- (b) receipt of the State's notice under **Subsection 9. (a) or (c)(i)**, identifying any Nonconformities.

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

- (a) continue the process set forth in this **Section 9**;
- (b) accept the Software as a nonconforming deliverable, in which case the Fees for such Software will be reduced equitably to reflect the value of the Software as received relative to the value of the Software had it conformed; or
- (c) deem the failure to be a non-curable material breach of this Contract and a Statement of Work and terminate this Contract in accordance with **Section 16**.

9.6 Acceptance. Acceptance ("**Acceptance**") of the Software (subject, where applicable, to the State's right to Integration Testing) will occur on the date that is the earliest of the State's delivery of a notice accepting the Software under **Subsection 9.3(b)**, or **(c)(ii)**.

10. Non-Software Acceptance.

10.1 Reserved.

10.2 Reserved.

10.3 All non-Software Deliverables are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("State Review Period"), unless otherwise provided in the Statement of Work. If the non-Software 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 non-Software Deliverables are accepted but noted deficiencies must be corrected; or (b) the non-Software Deliverables are rejected. If the State finds material deficiencies, it may: (i) reject the non-Software Deliverables without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with **Section 16**.

10.4 Within 10 Business Days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any non-Software Deliverables, Contractor

must cure, at no additional cost, the deficiency and deliver unequivocally acceptable non-Software Deliverables to the State. If acceptance with deficiencies or rejection of the non-Software Deliverables impacts the content or delivery of other non-completed non-Software Deliverables, the parties' respective Program Managers 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.

10.5 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 order in whole or in part. The State, or a third party identified by the State, may provide the non-Software Deliverables and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

11. Assignment. Contractor may not assign this Contract or any of its rights or delegate any of its duties or obligations hereunder, voluntarily, or involuntarily, whether by merger (regardless of whether it is the surviving or disappearing entity), conversion, consolidation, dissolution, or operation of law 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 governmental entity if such assignment is made reasonably necessary by operation of controlling law or regulation. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.

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

13. Ordering, Invoices and Payment.

13.1 Authorizing Document. The document for the Contract will be a delivery order. No work should start until the delivery order is received by the Contractor.

13.2 Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for the Solution provided as specified in Statement(s) of Work. Invoices must include an itemized statement of all charges.

13.3 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 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.

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

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

13.6 Taxes. The State is exempt from federal excise tax, state, and local sales taxes, and use taxes if the Solution purchased under this Contract is for the State's exclusive use. Contractor will not include the collection of taxes for which the State is exempt in any invoices or payments related to this Contract. The State is not responsible for taxes imposed or assessed on Contractor.

13.7 Pricing/Fee Changes. Throughout the Term, all Pricing set forth in this Contract will be as set forth in **Schedule B – Pricing Schedule** and will not be increased, unless the State requires additional licenses, in which case the amount of the Fee per license the additional licenses will also remain fixed at the rates set forth in **Schedule B – Pricing Schedule**.

14. Liquidated Damages.

14.1 The parties understand and agree that any liquidated damages (which includes but is not limited to applicable credits) set forth in this Contract are reasonable estimates of the State's damages in accordance with applicable law.

14.2 The parties acknowledge and agree that Contractor could incur liquidated damages for more than one event.

14.3 The assessment of liquidated damages will not constitute a waiver or release of any other remedy the State may have under this Contract for Contractor's breach of this Contract, including without limitation, the State's right to terminate this Contract for cause and the State will be entitled in its discretion to recover actual damages caused by Contractor's failure to perform its obligations under this Contract. However, the State will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages.

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

15. Stop Work Order. The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. 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 Contract or delivery order. The State will not pay for activities that have been suspended, Contractor's lost profits, or any additional compensation during a stop work period.

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

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

- (a) The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State:
 - i) endangers the value, integrity, or security of State Systems, State Data, or the State's facilities or personnel;
 - (ii) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; or
 - (iii) breaches any of its material duties or obligations under this Contract. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.
- (b) If the State terminates this Contract under this **Subsection 16.1**, the State will issue a termination notice specifying whether Contractor must:
 - (i) cease performance immediately. Contractor must submit all invoices for Services accepted by the State within 30 days of the date of termination. Failure to submit an invoice within that timeframe will constitute a waiver by Contractor for any amounts due to Contractor for Services accepted by the State under this Contract, or
 - (ii) continue to perform for a specified period. If it is later determined that Contractor was not in breach of this Contract, the termination will be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in **Subsection 16.2**.
- (c) The State will only pay for amounts due to Contractor for Services accepted by the State on or before the date of termination, subject to the State's right to set off

any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. Contractor must promptly reimburse to the State any Fees prepaid by the State prorated to the date of such termination, including any prepaid Fees. Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Services from other sources.

16.2 Termination for Convenience. The State may immediately terminate this Contract in whole or in part, without penalty and for any reason or no reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must:

- (a) cease performance immediately. Contractor must submit all invoices for Services accepted by the State within 30 days of the date of termination. Failure to submit an invoice within that timeframe will constitute a waiver by Contractor for any amounts due to Contractor for Services accepted by the State under this Contract, or
- (b) continue to perform in accordance with **Subsection 16.3**. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities to the extent the funds are available.

16.3 Transition Responsibilities.

(a) Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 180 calendar days; the "**Transition Period**"), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract to continue without interruption or adverse effect, and to facilitate the orderly transfer of the Services to the State or its designees. Such transition assistance may include but is not limited to:

- (i) continuing to perform the Services at the established Contract rates;
- (ii) taking all reasonable and necessary measures to transition performance of the work, including all applicable Services to the State or the State's designee;
- (iii) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, and comply with **Section 22**, including without limitation, the return or destruction of State Data at the conclusion of the Transition Period; and
- (iv) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, the "**Transition Responsibilities**"). The Term of this Contract is automatically extended through the end of the Transition Period.

(b) Contractor will follow the transition plan attached as **Schedule G** as it pertains to both transition in and transition out activities.

17. Indemnification

17.1 General Indemnification. Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to:

- (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract;
- (b) any infringement, misappropriation, or other violation of any Intellectual Property Right or other right of any third party;
- (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).

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

- (a) regular updates on proceeding status;
- (b) participate in the defense of the proceeding;
- (c) employ its own counsel; and to
- (d) retain control of the defense, at its own cost and expense, if the State deems necessary. Contractor will not, without the State's prior written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. Any litigation activity on behalf of the State or any of its subdivisions 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.

17.3 The State is constitutionally prohibited from indemnifying Contractor or any third parties.

18. Infringement Remedies.

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

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

(a) procure for the State the right to continue to use such Deliverable, or component thereof to the full extent contemplated by this Contract; or

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

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

(a) refund to the State all amounts paid by the State in respect of such Allegedly Infringing Materials and any other aspects of the Deliverable provided under a Statement of Work for the Allegedly Infringing Materials that the State cannot reasonably use as intended under this Contract; and

(b) in any case, at its sole cost and expense, secure the right for the State to continue using the Allegedly Infringing Materials for a transition period of up to 6 months to allow the State to replace the affected features of the Deliverable without disruption.

18.4 If Contractor directs the State to cease using any Deliverable under **Subsection 18.3**, the State, at its sole discretion, will be entitled to declare such a direction from the Contractor to cease use a material breach of the Contract and may terminate this Contract under **Section 16**. Unless the claim arose against the Deliverable independently of any of the actions specified below, Contractor will have no liability for any claim of infringement arising solely from:

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

(b) modification of the Deliverable by the State without the prior knowledge and approval of Contractor.

19. Disclaimer of Damages and Limitation of Liability.

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

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

20. Disclosure of Litigation, or Other Proceeding. Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a Permitted Subcontractor, or an officer or director of Contractor or Permitted Subcontractor, that arises during the term of the Contract, including:

- (a) a criminal Proceeding;
- (b) a parole or probation Proceeding;
- (c) a Proceeding under the Sarbanes-Oxley Act;
- (d) a civil Proceeding involving:
 - (i) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or
 - (ii) a governmental or public entity's claim or written allegation of fraud; or
- (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

21. State Data.

21.1 Ownership. The State's data ("**State Data**"), which will be treated by Contractor as Confidential Information, includes:

- (a) User Data;
- (b) Work Product;
- (c) all data made available to Contractor for or during the provision of the Solution, including but not limited to all text, sound, video, image files, or software; and
- (d) any other data collected, used, Processed, stored, or generated in connection with the Solution, including but not limited to:
 - (i) personally identifiable information ("**PII**") collected, used, Processed, stored, or generated as the result of the Solution, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and
 - (ii) protected health information ("**PHI**") collected, used, Processed, stored, or generated as the result of the Solution, which is defined under the Health

Insurance Portability and Accountability Act (“**HIPAA**”) and its related rules and regulations.

21.2 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.

21.3 Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Solution, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Solution. 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 Solution, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law;
- (c) keep and maintain State Data in Canada or the United States or its territories. For the avoidance of doubt, no other Offshore Resources are permitted under this Contract; and
- (d) not use, sell, rent, transfer, mine, distribute, commercially exploit, 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. Contractor’s misuse of State Data may violate state or federal laws, including but not limited to MCL 752.795

21.4 Third-Party Requests. Contractor will immediately notify the State upon receipt of any third-party requests which in any way might reasonably require Access to State Data. Contractor will notify the State Program Managers or their designees by the fastest means available and also in writing. Contractor must provide such notification within twenty-four (24) hours from Contractor’s receipt of the request. Contractor will not respond to subpoenas, service of process, FOIA requests, and other legal requests related to the State without first notifying the State. Upon request by the State, Contractor must provide to the State, its proposed response to the third-party request with adequate time for the State to review, and, as it deems necessary, to revise the response, object, or take other action.

21.5 Loss or Compromise of Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, integrity, or availability 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 24 hours of becoming aware of such occurrence;

- (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State;
- (c) in the case of PII or PHI, at the State's sole election:
 - (i) with approval and assistance from the State, notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within 5 calendar days of the occurrence; or
 - (ii) reimburse the State for any costs in notifying the affected individuals;
- (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than 24 months following the date of notification to such individuals;
- (e) perform or take any other actions required to comply with applicable law as a result of the occurrence;
- (f) pay for any costs associated with the occurrence, including but not limited to any costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution;
- (g) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence;
- (h) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and
 - (i) provide to the State a detailed plan within 10 calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, not be tangentially used for any solicitation purposes, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. The State will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification

to any other party, including but not limited to public media outlets, must be reviewed and approved by the State in writing prior to its dissemination.

21.6 The parties agree that any damages arising out of a breach of the terms set forth in this **Section** are to be considered direct damages and not consequential damages.

22. 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.

22.1 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: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party’s proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

22.2 Obligation of Confidentiality. Upon execution of this Contract, the parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to the Contractor’s subcontractor is permissible where:

- (a) the subcontractor is a Permitted Subcontractor;
- (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Permitted Subcontractor's responsibilities; and
- (c) Contractor obligates the Permitted Subcontractor in a written contract to maintain the State’s Confidential Information in confidence. At the State’s request, any of the Contractor’s and Permitted Subcontractor’s Representatives may be required to execute a separate agreement to be bound by the provisions of this **Subsection 22.2.**

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

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

22.5 Surrender of Confidential Information. Upon termination or expiration of this Contract or a Statement of Work, in whole or in part, each party must, within 5 Business Days from the date of termination or expiration, 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. Upon confirmation from the State, of receipt of all data, Contractor must permanently sanitize or destroy the State's Confidential Information, including State Data, from all media including backups using National Security Agency ("NSA") and/or National Institute of Standards and Technology ("NIST") (NIST Guide for Media Sanitization 800-88) data sanitization methods or as otherwise instructed by the State. If the State determines that the return of any Confidential Information is not feasible or necessary, Contractor must destroy the Confidential Information as specified above. The Contractor must certify the destruction of Confidential Information (including State Data) in writing within 5 Business Days from the date of confirmation from the State.

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

23.1 Right of Audit. Pursuant to MCL 18.1470, the State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to this Contract through the Term of this Contract and for 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.

23.2 Right of Inspection. 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 financial errors are revealed, the amount in error must be

reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of this Contract must be paid or refunded within 45 calendar days.

23.3 Application. This **Section 23** applies to Contractor, any Affiliate, and any Permitted Subcontractor that performs Services in connection with this Contract.

24. Support Services. Contractor will provide the State with the Support Services described in the Service Level Agreement attached as **Schedule D** to this Contract. Such Support Services will be provided:

(a) Free of charge during the Warranty Period.

(b) Thereafter, for so long as the State elects to receive Support, in consideration of the State's payment of Fees for such services in accordance with the rates set forth in the Pricing Schedule.

25. Data Security Requirements. Throughout the Term and at all times in connection to the Solution, Contractor will maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State's Confidential Information that comply with the requirements of the State's data security policies as set forth in **Schedule E** to this Contract.

26. Training. Contractor will provide, at no additional charge, training on the Solution provided hereunder in accordance with the times, locations and other terms set forth in a Statement of Work. Upon the State's request, Contractor will timely provide training for additional Authorized Users or other additional training on the Solution for which the State requests such training, at such reasonable times and locations and pursuant to such rates and other terms as are set forth in the Pricing Schedule.

27. Maintenance Releases; New Versions

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

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

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

27.4 Supported Third-Party and Open-Source Components. Contractor will utilize only currently supported versions of all Third-Party or Open Source Components and will notify the State when not using the most recently published Third-Party and Open Source Components.

28. Reserved.

29. Contractor Representations and Warranties.

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

- (a) It is duly organized, validly existing, and in good standing as a corporation or other entity as represented under this Contract under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;
- (b) It has the full right, power, and authority to enter into this Contract, and to perform its contractual obligations;
- (c) The execution of this Contract by its Representative has been duly authorized by all necessary organizational action; and
- (d) When executed and delivered by Contractor, this Contract will constitute the legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with its terms.
- (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.

29.2 Reserved.

29.3 Software Representations and Warranties. Contractor also represents and warrants to the State that:

- (a) Contractor is the legal and beneficial owner of the entire right, title and interest in and to the Software, including all Intellectual Property Rights relating thereto or is the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the Intellectual Property Rights to the Software or to use the Software in the Contract (i) without the further consent of any third party and (ii) without conditions or requirements not set forth in this Contract;
- (b) Contractor has, and throughout the Term and any additional periods during which Contractor does or is required to perform the Services will have, the unconditional and irrevocable right, power and authority, including all permits and licenses required, to provide the Services and grant and perform all rights and licenses granted or required to be granted by it under this Contract;
- (c) the Software, and the State's use thereof, is and throughout the license term will be free and clear of all encumbrances, liens and security interests of any kind;
- (d) neither its grant of the license, nor its performance under this Contract does or to its knowledge will at any time:

- (i) conflict with or violate any applicable law;
 - (ii) require the consent, approval or authorization of any governmental or regulatory authority or other third party; or
 - (iii) require the provision of any payment or other consideration to any third party;
- (e) when used by the State or any Authorized User in accordance with this Contract the Solution as provided, delivered, or installed by Contractor does not or will not:
- (i) infringe, misappropriate, or otherwise violate any Intellectual Property Right or other right of any third party; or
 - (ii) fail to comply with any applicable law;
- (f) as provided by Contractor, the Solution does not and will not at any time during the Term contain any:
- (i) Harmful Code; or
 - (ii) Third party or Open Source Components or operate in such a way that it is developed or compiled with or linked to any third-party or Open Source Components, other than Approved Third-Party Components.
- (g) all Documentation is and will be complete and accurate in all material respects when provided to the State such that at no time during the license term will the Software have any material undocumented feature; and
- (h) Contractor will perform all Services in a timely, skillful, professional and workmanlike manner in accordance with commercially reasonable industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications, and will devote adequate resources to meet its obligations under this Contract.
- (i) when used in the Operating Environment (or any successor thereto) in accordance with the Documentation, all Software as provided by Contractor, will be fully operable, meet all applicable specifications, and function in all respects, in conformity with this Contract and the Documentation;
 - (j) Contractor acknowledges that the State cannot indemnify any third parties, including but not limited to any third-party software providers that provide software that will be incorporated in or otherwise used in conjunction with the Services, and that notwithstanding anything to the contrary contained in any third-party software license agreement or end user license agreement, the State will not indemnify any third party software provider for any reason whatsoever;
- (k) no Maintenance Release or New Version, when properly installed in accordance with this Contract, will have a material adverse effect on the functionality or operability of the Software.

(l) all Configurations or Customizations made during the Term will be forward-compatible with future Maintenance Releases or New Versions and be fully supported without additional costs.

(m) If Contractor Hosted:

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

(ii) the Solution will in all material respects conform to and perform in accordance with the Specifications and all requirements of this Contract, including the Availability and Availability Requirement provisions set forth in the Service Level Agreement;

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

(n) During the Term of this Contract, any audit rights contained in any third-party software license agreement or end user license agreement for third-party software incorporated in or otherwise used in conjunction with the Solution, will apply solely to Contractor or its Permitted Subcontractors. Regardless of anything to the contrary contained in any third-party software license agreement or end user license agreement, third-party software providers will have no audit rights whatsoever against State Systems or networks.

29.4 Work Product Representations and Warranties: Contractor further represents and warrants to the State that:

(a) Contractor has all necessary rights, title, and/or licenses required to create, develop, or generate Work Product and to transfer all ownership rights in Work Product to the State as set forth in Section 7.

(b) Contractor has verified that no third-party intellectual property has been incorporated into any Work Product created, developed, or generated by any non-human means used by Contractor.

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

30. 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 including an offer of employment; 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 Permitted Subcontractor that provides the Solution in connection with this Contract.

31. Compliance with Laws. Contractor, its subcontractors, including Permitted Subcontractors, and their respective Representatives must comply with all laws in connection with this Contract.

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

33. Unfair Labor Practice. Under MCL 423.324, the State may void this Contract if the name of the Contractor, or the name of a subcontractor, manufacturer, or supplier of the Contractor, subsequently appears on the Unfair Labor Practice register compiled under MCL 423.322.

34. Governing Law. This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles. Contractor waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint an agent in Michigan to receive service of process.

35. Non-Exclusivity. Nothing contained in this Contract is intended nor is to be construed as creating any requirements contract with Contractor, nor does it provide Contractor with a right of first refusal for any future work. This Contract does not restrict the State or its agencies from acquiring similar, equal, or a like Solution from other sources.

36. Force Majeure

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

36.2 State Performance; Termination. In the event of a Force Majeure Event affecting Contractor's performance under the Contract, the State may suspend its performance

hereunder until such time as Contractor resumes performance. The State may terminate the Contract by written notice to Contractor if a Force Majeure Event affecting Contractor's performance hereunder continues substantially uninterrupted for a period of 5 Business Days or more. Unless the State terminates the Contract pursuant to the preceding sentence, any date specifically designated for Contractor's performance under the Contract will automatically be extended for a period up to the duration of the Force Majeure Event.

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

(a) in no event will any of the following be considered a Force Majeure Event:

(i) shutdowns, disruptions or malfunctions of the Solution or any of Contractor's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to the Solution; or

(ii) the delay or failure of any Contractor Personnel to perform any obligation of Contractor hereunder unless such delay or failure to perform is itself by reason of a Force Majeure Event.

(b) no Force Majeure Event modifies or excuses Contractor's obligations under **Section 21** (State Data), **22** (Non-Disclosure of Confidential Information), or **17** (Indemnification) of the Contract, Disaster Recovery and Backup requirements set forth in the Service Level Agreement, Availability Requirement (if Contractor Hosted) defined in the Service Level Agreement, or any data retention or security requirements under the Contract.

Provided Contractor was, at the time of a Force Majeure Event, in compliance with all Data Recovery and Backup Requirements set forth in the Service Level Agreement or any data retention or security requirements under the Contract immediately prior to a particular Force Majeure Event, if that particular Force Majeure Event was so extreme that compliance with such Disaster Recovery and Data Backup requirements would be impossible, performance may be excused to the extent necessary to provide Contractor a reasonable opportunity to restore full Services and once again meet all obligations under the Contract.

37. 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 Program 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 decides 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.

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

39. 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.

40. Waiver. Failure to enforce any provision of this Contract will not constitute a waiver.

41. Survival. Any right, obligation, or condition that, by its express terms or nature and context is intended to survive, will survive the termination or expiration of this Contract; such rights, obligations, or conditions include, but are not limited to, those related to transition responsibilities; indemnification; disclaimer of damages and limitations of liability; State Data; non-disclosure of Confidential Information; representations and warranties; insurance and bankruptcy.

42. RESERVED.

43. RESERVED.

44. Contract Modification. This Contract may not be amended or modified in any way, except by a properly signed **Change Notice**. Notwithstanding the foregoing, no subsequent Statement of Work or Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

45. Accessibility Requirements.

45.1 All Software provided by Contractor under this Contract, including associated content and documentation, must, by April 1, 2026, conform to the Digital Accessibility Standards. Throughout the Term of the Contract, Contractor must:

- (a) maintain compliance with the Digital Accessibility Standards;
- (b) comply with plans and timelines approved by the State to achieve conformance in the event of any deficiencies;
- (c) ensure that no Maintenance Release, New Version, update or patch, when properly installed in accordance with this Contract, will have any adverse effect on the conformance of Contractor's Software to the Digital Accessibility Standards;
- (d) promptly respond to and resolve any complaint the State receives regarding accessibility of Contractor's Software;
- (e) upon the State's written request, provide evidence of compliance with this Section by delivering to the State Contractor's most current PAT for each product provided under the Contract; and
- (f) participate in the State of Michigan Digital Standards Review described below.

45.2 State of Michigan Digital Standards Review.

Throughout the Term, Contractor must assist the State, at no additional cost, with development, completion, and on-going maintenance of an accessibility plan, which requires Contractor, upon request from the State, to submit evidence to the State to review and validate Contractor's accessibility and compliance with the Digital Accessibility Standards. A State of Michigan Digital Standards Review will be completed on the Software, and Contractor must remediate all accessibility issues identified in such review at no additional cost.

Additional State of Michigan Digital Standards Reviews may be required thereafter on an annual basis, or as otherwise required by the State. At no additional cost, Contractor must remediate all issues identified from any such review pursuant to plans and timelines that are approved in writing by the State.

45.3 Contractor must, 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 arising out of its failure to comply with the foregoing accessibility standards.

Contractor will not be obligated to indemnify the State for any claims, damages, or liabilities arising from Contractor's performance of the Contract to the extent such performance was in compliance with the directions or specifications provided by the State, including the State's review and approval of compliance.

45.4 Failure to comply with the requirements in this **Section 45** shall constitute a material breach of this Contract.

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

47. Relationship of the Parties. The relationship between the parties is that of independent contractors. 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. Neither party has authority to contract for nor bind the other party in any manner whatsoever.

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

49. No Third-Party Beneficiaries. This Contract is for the sole benefit of the parties and their respective successors and permitted assigns. Nothing herein, express or implied, is intended to or will confer on any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Contract. However, if this Contract is subject to the Michigan Prevailing Wage Act, MCL 408.1101 et seq. construction mechanics (as defined in MCL 408.1101 (b)) are intended beneficiaries for the limited purposes set forth and as required by MCL 408.1112.

50. Prevailing Wage Act Statutory Provision. As required by MCL 408.1112, if the Michigan Prevailing Wage Act, MCL 408.1101 et seq. applies to this Contract, construction mechanics (as defined in MCL 408.1101 (b)) are intended beneficiaries of the contractual prevailing wage, fringe benefit, and nondiscrimination nonretaliation requirements of the Contract. Any construction mechanic aggrieved by the failure of a Contractor or subcontractor to pay prevailing wages or benefits as specified in this Contract, or by a violation of MCL 408.1107, in addition to any other remedies provided in Public Act 10 of 2023 or by law, may bring an action in a court of competent jurisdiction against the Contractor or subcontractor for damages or injunctive relief and may be awarded reinstatement or other appropriate relief, and all damages sustained, together with actual costs and attorney fees at trial and on appeal. If the Michigan Prevailing Wage Act, MCL 408.1101 et seq. applies to this Contract, the rates of wages and fringe benefits to be paid to each class of construction mechanic (as defined in MCL 408.1101 (b)) by Contractor and subcontractors must not be less than the wage and fringe benefit rates prevailing in the locality in which the work is performed.

51. Equitable Relief. Each party to this Contract acknowledges and agrees that (a) a breach or threatened breach by such party of any of its obligations under this Contract may give rise to irreparable harm to the other party for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by such party of any such obligations, the other party hereto is, in addition to any and all other rights and remedies that may be available to such party at law, at equity or otherwise in respect of such breach, entitled to seek equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy, until or unless required by that court. Each party to this Contract agrees that such party will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this Section.

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

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

(b) the State will be entitled to a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property comprising or relating to any Deliverables, and the same, if not already in the State’s

possession or in escrow, if applicable, will be promptly delivered to the State, unless Contractor elects to and does in fact continue to perform all of its obligations under this Contract.

53. 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
Schedule C	Insurance Schedule
Schedule D	Service Level Agreement
Schedule E	Data Security Requirements
Schedule F	Disaster Recovery Plan
Schedule G	Transition Out Plan

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

55. Entire Agreement. These Terms and Conditions, including all Statements of Work and other Schedules and Exhibits (again collectively the “Contract”) constitutes the sole and entire agreement of the parties to this Contract with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the Terms and Conditions, the Schedules, Exhibits, and a Statement of Work, the following order of precedence governs: (a) first, these Terms and Conditions and (b) second, Schedule E – Data Security Requirements and (c) third, each Statement of Work; and (d) fourth, the remaining Exhibits and Schedules to this Contract. NO TERMS ON CONTRACTOR’S INVOICES, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE SERVICES, OR DOCUMENTATION HEREUNDER, EVEN IF ATTACHED TO STATE’S DELIVERY OR PURCHASE ORDER, WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE OR ANY AUTHORIZED USER FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE AND THE AUTHORIZED USER, EVEN IF ACCESS TO OR USE OF SUCH SERVICE OR DOCUMENTATION REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

SCHEDULE A – STATEMENT OF WORK

1. DEFINITIONS

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

Term	Definition
DNR	Department of Natural Resources
EESG	Electric Edge Systems Group
FACTS	Fishing Activity and Catch Tracking System
CORA	Chippewa Ottawa Resource Authority
PCI	Payment Card Industry
CEPAS	Centralized Electronic Payment Authorization System
LED	Law Enforcement Division
COI	Certificate Of Inspection
BYOD	Bring Your Own Device

2. BACKGROUND

The Michigan Department of Natural Resources (DNR) requires hosting, maintenance, and enhancements of State of Michigan owned (DNR customized) code within the Fishing Activity and Catch Tracking System (FACTS) application.

The below functionality provided by this system is essential to DNR for the management of the State of Michigan fisheries and fishing activities and enables them to comply with State and Federal requirements.

1. State Wholesale Purchases.

A DNR customized module to annually license and track state-licensed wholesale dealers of fish, receive their daily purchase reports and analyze annual trends in wholesaling of Michigan’s commercially caught fish.

2. State Licensed Commercial Fishing.

A DNR customized module to annually license and track State of Michigan licensed commercial fishing, including receiving their daily catch reports and analyzing annual trends in commercial fishing.

3. Licensing.

A component of Wholesale, Commercial, Recreational, Vessel Operations and Baitfish Exporters/Catch modules used to support application, renewal, and purchase of Michigan licenses and permits, and track licensed entities.

4. Tribal Commercial Fishing.

A feature within the Commercial module to import tribal commercial fishing reports from Michigan tribes and provide access to the data for third-party tribal and federal governments through the custom creation of roles and permissions that facilitate and comply with State of Michigan legislation and treaties with Tribal governments.

5. Charter Program.

A feature within the Charter module to monitor charter fishing activities, receive catch reports, and analyze annual trends in Great Lakes charter fishing.

6. Inland Guide Program.

A feature within the Charter module to track inland lake & river guide activities, receive their catch reports, and analyze annual trends in inland guide fishing.

7. Baitfish Exporters.

A module to track state-licensed entities who export bait for commercial resale, receive their export reports and analyze annual trends in baitfish exports.

8. Baitfish Catch.

A module to track state-licensed entities who harvest bait for commercial resale, receive their harvest reports and analyze annual trends in baitfish catch.

9. LED Vessel Inspections.

A module to record and track vessel inspection applications, dockside inspections, and drydock inspections. This module may be used to integrate inspection data with fisheries data.

3. PURPOSE/CHALLENGE STATEMENT

The State is contracting for a Contractor hosted SaaS Software Solution and applicable Services.

4. IT ENVIRONMENT RESPONSIBILITIES

For a Contractor Hosted Software Solution:

Definitions:

Facilities – Physical buildings containing Infrastructure and supporting services, including physical access security, power connectivity and generators, HVAC systems, communications connectivity access and safety systems such as fire suppression.

Infrastructure – Hardware, firmware, software, and networks, provided to develop, test, deliver, monitor, manage, and support IT services which are not included under Platform and Application.

Platform – Computing server software components including operating system (OS), middleware (e.g., Java runtime, .NET runtime, integration, etc.), database and other services to host applications.

Application – Software programs which provide functionality for end user and Contractor services.

Storage – Physical data storage devices, usually implemented using virtual partitioning, which store software and data for IT system operations.

Backup – Storage and services that provide online and offline redundant copies of software and data.

Development - Process of creating, testing and maintaining software components.

Component Matrix	Name all contractor(s) and/or subcontractor(s) including IT service providers for each contract component.
Facilities	Vivio Technologies Inc. (Hosting) Electric Edge Systems Group Inc. (Software/Application Provider)
Infrastructure	Virtual Private Server (VPS) production and test hosting at Vivio Technologies Inc. (VPS Hosting). Developers run their own development environments on Windows PCs which mirror the TEST/PROD server setups
Platform	Adobe ColdFusion 2021 Enterprise, Windows Server 2019, MS SQL Server 15.0.2130, JVM 11.0.27
Application	FACTS (Fishing Activity and Catch Tracking System)
Storage	Vivio Technologies Inc. (Hosting)
Backup	Vivio Technologies Inc. (Redundant Hosting) (1) Walla Walla, Washington Data Center (Tower Site) (2) Walla Walla, Washington Data Center (Valley Vision Site) Electric Edge Office – QNAP TS-451 encrypted file server
Development	Eclipse 4.x, Visual Studio Code 1.65.2., Custom Adobe ColdFusion framework, jQuery, jQuery Mobile, CSS Level 3, JavaScript, CFML Language(s): CSS Level 3, Java, JavaScript, CFML

5. ADA COMPLIANCE

The State is required to comply with the Americans with Disabilities Act of 1990 (ADA) and has adopted standards and procedures regarding accessibility requirements for websites, applications, content, and electronic documents. Due to a change in the law, the State is required to comply with specific accessibility standards for websites, applications, content and documents. Starting 4/01/2026, throughout the Term, all websites, applications, software, content, and electronic documents, including but not limited to mobile applications, text, images, sounds, videos, controls, animations, links, and documents (including files in the following formats: PDF, word processing, presentation, and spreadsheet), created, provided, or made available by the Contractor under this Contract, must comply with WCAG 2.1 Level AA.

6. USER TYPE AND CAPACITY

Type of User: State Employees & Trusted Third Party

Access Type: Read Access, Write Access, Admin Access

Contractor Solution must meet the expected number of concurrent Users below:

Type of User	Access Type	Number of Users	Number of Concurrent Users
50 Commercial Licensed Users	Role Permission Based (Read/Write)	50	~ 5
100 Wholesale Licensed Users	Role Permission Based (Read/Write)	100	~10
600-1800 Charter Boat Licenses	Role Permission Based (Read/Write)	600 – 1800	~120
30-70 Baitfish Harvesters	Role Permission Based (Read/Write)	30 – 70	~5
<70 harvested baitfish exporters Fisheries	Role Permission Based (Read/Write)	<70	~7
DNR Users	Role Permission Based (Read/Write/Admin)	~30	~7
LED Vessel Inspections	Role Permission Based (Read/Write/Admin)	<50	~10

7. ACCESS CONTROL AND AUTHENTICATION

The Contractor's solution must implement identity federation with the State's MiLogin IT Identity and Access Management (IAM) environment as described in the State of Michigan Administrative Guide ([1340.00.020.08 Enterprise Identity and Access Management Services Standard \(michigan.gov\)](#)).

To support federation with the SOM MiLogin solution, the Contractor's solution must support SAML, OpenID or OAuth federated identity protocols.

Solutions running within the States internally managed IT environment may be suitable for integration with the State's Active Directory services as identified in the 1340.00.020.08 standard.

8. REQUIRED FUNCTIONALITY RELATING TO DATA RETENTION, DISPOSAL, AND RETRIEVAL

The State has legal obligations to retain, dispose, and retrieve State Data along with obligations to manage and secure State Data. To meet these obligations, the Solution must allow the State to:

- 1) retain all data for the entire length of the Contract.
- 2) delete its data or request the deletion of its data, even data that may be stored offline or in backups.
- 3) transfer its data back to the State or to a new vendor or new solution.
- 4) transfer its data to the Archives of Michigan as may be required by a retention and disposal schedule.
- 5) retrieve data, even data that may be stored offline or in backups.

Except as otherwise stated in the Contract, Contractor will not dispose of, delete, or destroy State Data without the prior written approval of the State.

9. END USER AND IT OPERATING ENVIRONMENT

The SOM IT environment includes FedRAMP authorized major cloud providers and on-premises market leading virtualization environments, with supporting platforms that includes enterprise storage, monitoring, and management running in house and in cloud hosting provides.

Contractor must accommodate the latest browser versions (including mobile browsers) as well as some pre-existing browsers. To ensure that users are able to access online services, Contractor must ensure applications and websites display and function accurately in, at minimum, the two most recent major versions of the following browsers or successor browser, without reliance on special plugins or extensions:

- Google Chrome
- Microsoft Edge
- Firefox
- Safari
- Any future browsers that obtain over 5% of market share as measured by industry sites such as statcounter.com or W3counter.com

Contractor will maintain the application and environment to ensure End of Life frameworks are upgraded. This will help security compliance with the State's standards.

Framework upgrades that will exceed 80 hours of effort will be submitted as a Contract Change Notice to the State for review and acceptance before work will begin.

10. SOFTWARE

Software requirements are identified in **Schedule A – Table 1 Business Specification Worksheet**.

Contractor must provide a Software Bill of Materials (SBOM) containing details and supply chain relationships of various components used in the Solution. The SBOM will contain all open source and third-party components, libraries, and dependencies included with or used in connection with the Solution. This information must be provided to the State in a mutually agreed format on a quarterly basis and for new components at least 30 days prior to being added to the Solution.

Look and Feel Standards

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

Mobile Responsiveness

If the software will be used on a mobile device, after November 1, 2025, as define in Schedule A – Table 1, Business Specification Worksheet, the Software must utilize responsive design practices to ensure the application is accessible via a mobile device.

SOM IT Environment Access

Contractor will not access State environments or State Systems from locations outside the United States or the jurisdiction territories of the United States. Contractor must access State environments using one or more of the following methods:

- State provided VDI (Virtual Desktop Infrastructure) where compliant.
- State provided and managed workstation device.
- Contractor owned and managed workstation maintained to all State policies and standards.
- Contractor required interface with State Systems which must be maintained in compliance with State policies and standards as set forth in **Schedule E – Data Security Requirements**.

Software:

FACTS (Fishing Activity and Catch Tracking System) V1.0. Licensing Structure - Monthly Subscription fee based on modules in use. The software is a web application consisting of a Windows web server running Adobe ColdFusion for backend business logic and a Microsoft SQL Server database.

Fishery and Fisheries Related Reporting:

End Users login to the application and their permissions are based on their user role and to which modules they have access. The main purpose of their accounts is to report their activity in a fishery

or activity related to fisheries. Users can record and save their activity (trips/purchases/baitfish harvest/baitfish exports) at any time they prefer, if it is before the reporting deadline for the reporting period involved. By the reporting deadline, User must go through an official reporting process to certify what they have already recorded and saved is complete and accurate. Users can make changes to what they have already saved or add more activity as part of that process. User can also report “no activity” for future reporting periods if they know they will have none. They can also report “no activity” for a current reporting period or for ones in the past that they should have reported no activity for at the time. In addition to the main reporting goal, Users can also access various reports, purchase/renew various licenses/permits, and manage their users accounts and data entry preferences.

LED Vessel Inspections:

This module is a standalone module for the LED to have vessel owners apply for various types of vessel inspections based on other inspections previously performed. Vessel Owners will apply for the inspections online, either through a FACTS account the User already has, or one can be created before submitting the application. Submitted applications are then handed off to LED district secretaries who may edit them if issues are found. Once they are done editing the application (if needed), the secretaries can then hand off the application to an LED conservation officer (dockside inspections) or the drydock inspection vendor (drydock inspections). Whoever receives the application (secretaries, conservation officers, and drydock vendors) is based on the LED district assigned to each application. Conservation officers and drydock vendors (collectively “the inspectors”) then schedule the inspection with the applicants outside of FACTS but mark each application in FACTS as “scheduled” once that is done. Being “scheduled” then unlocks the ability of the inspectors to fill in the inspection form. Once an inspection form shows no unsatisfactory items on the inspection checklist, it unlocks the ability for the inspectors to create a Certificate of Inspection (COI) and notify the applicant that their vessel passed inspection, and the COI can be obtained from their FACTS account. The system will send upcoming inspection reminders to vessel owners in FACTS based on established business rules.

Responsibilities:

Contractor must install, configure, and manage all software needed. There are no unique software requirements to fulfill the terms of the Contract.

State Environment Access:

Contractor will require no access to the State environment. If that ever changes, Contractor will discuss the change with the State so appropriate plans can be made. State staff as well as end users (such as fishers, wholesale fish dealers, bait harvesters/exporters, and LED staff) require a modern traditional or mobile web browser, an account in FACTS, and an Internet connection.

Customizations:

Contractor does not require any custom software to support internal SOM systems.

Third Party Components:

Contractor has identified the following third-party components, including open source components included with or used in connection with the proposed Solution:

- MapBox – for serving interactive maps for fishing location selection.
- Google Places - for address auto complete.
- The Pay Place (CEPAS provided payment form)
- OpenVPN – for creating a secure tunnel to our encrypted file server to backup truncated logs on the server.
- SmarterMail – a mail server to send e-mail through to users.

Use of AI:

Contractor does not use artificial intelligence (AI) within or is used to develop the Solution.

Devices and Features:

The Contractor’s solution is not device specific as this Solution is built for BYOD (bring your own device). All that is needed is any of the major mobile web browsers.

Contractor’s Solution provides the list of features below that can be performed via a mobile device:

- Submit charter trips.
- Search charter trips.
- Submit commercial trips
- Search commercial trips
- Submit baitfish harvesting trips
- Search baitfish harvesting trips
- Submit official trip reports for reporting periods.
- Provide notices of no fishing activity for reporting periods.
- Search their reporting history and download the submitted trips (when any are submitted).
- View and edit a sub-set of their user account details – those needed if reporting from the field.
- Submit wholesale purchases.
- Search wholesale purchases.

- Submit official wholesale purchases for reporting periods.
- Provide notices of no purchase activity for reporting periods.
- Search their reporting history and download the submitted purchases (when any are submitted).
- Submit baitfish exports
- Search baitfish exports
- Submit official baitfish exports for reporting periods.
- Provide notices of no baitfish export activity for reporting periods.
- Search their reporting history and download the submitted baitfish exports (when any are submitted).
- View and edit a sub-set of their user account details (manage password/username/security question and answer only).

11. INTEGRATION

Contractor must integrate their solution to the following technologies:

There is a re-direct that leads users to the State of Michigan credit card payment system CEPAS (Centralized Electronic Payment Authorization System) hosted pages to enter their payment, accounting information, etc. to pay licensing fees. That information is NOT transferred as part of the redirect and entered into CEPAS only.

Current Technology	CEPAS
Volume of Data	URL Only
Format of the input & export files	No Files Exchanged

12. RESERVE

13. RESERVE

14. RESERVE

15. TRANSITION RESPONSIBILITIES

Contractor Transition Plan is documented in **Schedule G – Transition Out Plan.**

16. DOCUMENTATION

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

Contractor must develop and submit for State approval complete, accurate, and timely Solution documentation to support all users, and will update any discrepancies, or errors through the life of the contract.

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

The only manuals needed are for end users (commercial fishers, charter fishers, wholesale purchasers, baitfish harvesters, baitfish exporters, LED). The Contractor must handle all technical details and must train admins (initially and as features change or are added for them).

Contractor must provide user manual files upon request from the State.

17. ADDITIONAL PRODUCTS AND SERVICES

Contractor will not be providing any additional Solution functionality, products or services to the State at this time.

18. CONTRACTOR PERSONNEL

Contractor Contract Administrator. Contractor resource who is responsible to(a) administer the terms of this Contract, and (b) approve and execute any Change Notices under this Contract.

Contractor Contract Administrator
Name: Bryan Stevenson
Address: 3016 Orillia Street, Victoria, BC, Canada, V9A 1Y8
Phone: 250-920-8830
Email: bryan@electricedgesystems.com

19. CONTRACTOR KEY PERSONNEL

Contractor Security Officer. Contractor resource who is responsible for responding to State inquiries regarding the security of the Contractor’s Solution. This person must have sufficient knowledge of the security of the Contractor Solution and the authority to act on behalf of Contractor in matters pertaining thereto. Contractor must inform the State of any change to this resource.

Contractor Security Officer
Name: Bryan Stevenson

Address: 3016 Orillia Street, Victoria, BC,
 Canada, V9A 1Y8
Phone: 250-920-8830
Email: bryan@electricedgesystems.com

Contractor Project Manager. Contractor resource who is responsible to 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, matters pertaining to the receipt and processing of Support Requests and the Support Services.

Contractor Project Manager
Name: Bryan Stevenson
Address: 3016 Orillia Street, Victoria, BC,
 Canada, V9A 1Y8
Phone: 250-920-8830
Email: bryan@electricedgesystems.com

20. CONTRACTOR PERSONNEL REQUIREMENTS

Background Checks.

If requested by the State, Contractor will conduct a criminal background check on Contractor Personnel. Contractor will not be required to provide the actual results of any such background checks to State. Contractor will not, without written consent, knowingly use Contractor Personnel with criminal convictions to provide Services to the State.

Contractor must pay for all costs associated with ensuring its staff meet all requirements.

Contractor must notify the State Program Manager(s) prior to removing or replacing any Contractor Personnel with access to State Data under this Contract. Contractor must also provide written certification to the State Program Manager(s) that Contractor Personnel’s access to State Data has been terminated. Contractor must notify the State in advance of allocating Contractor Personnel to multiple State Contracts or Projects. Contractor must provide detail of how a given Contractor Personnel meets the resource experience requirements in advance of replacing a Contractor Personnel. Contractor must provide monthly summary of Contractor Personnel allocation for all Contractor Personnel who have access to State Data.

Contractor must seek approval from the State prior to removing or replacing any Contractor Personnel with access to State Data.

Offshore Resources. Use of Offshore Resources is limited to Canada, and all other Offshore Resources are prohibited per the **Schedule E – Data Security Requirements**. Contractor must comply with the data security and other requirements in this Contract.

Disclosure of Permitted Subcontractors. If the Contractor intends to utilize Permitted Subcontractors (including but not limited to cloud providers, managed security providers, staff augmentation, etc.) as defined in the Software Terms, the Contractor must disclose the following:

- The legal business name; address; telephone number; a description of subcontractor’s organization and the services it will provide; and information concerning subcontractor’s ability to provide the Solution.
- The relationship of the Subcontractor to the Contractor. Of the total bid, the price of the Subcontractor’s work. Whether the Contractor has a previous working experience with the Subcontractor. If yes, provide details of that previous relationship.
- A complete description of the Solution that will be performed or provided by the subcontractor.

Contractor must provide detailed information as requested in the above requirement(s).	
The legal business name, address, telephone number of the Permitted Subcontractor(s).	Vivio Technologies POB 345 Walla Walla, WA 99362 Phone: 1.877.44VIVIO
A description of Permitted Subcontractor’s organization and the Services and/or Deliverables it will provide.	Vivio Technologies is the hosting provider
The relationship of the Permitted Subcontractor to the Contractor.	Electric Edge pays Vivio Technologies for hosting services associated with the FACTS system.
Whether the Contractor has a previous working experience with the Permitted Subcontractor. If yes, provide the details of that previous relationship.	Yes, hosting service has been in-place before this contract. SOC II for Vivio Technologies services is on file and was evaluated as part of the ATO received for DNR use of FACTS.
A complete description of the Contract Activities that will be performed or provided by the Permitted Subcontractor.	Primary & Redundant Hosting

21. STATE RESOURCES

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

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

State Contract Administrator
Name: Angela Wright
Phone: 517-899-4646
Email: WrightA33@michigan.gov

Program Managers. The DTMB and Agency Program Managers (or designee) will jointly approve all Deliverables and day to day activities.

DTMB Program Manager
Name: Laura Brancheau
Phone: (517) 618-9646
Email: brancheaul@michigan.gov

Agency Program Manager
Name: Kim Marton
Phone: (517) 388-6763
Email: martonK@michigan.gov
Agency Program Manager
Name: Tracy Claramunt
Phone: (231) 330-9132
Email: claramuntt@michigan.gov

22. MEETINGS

If a new Project is initiated, at start of the engagement, the Contractor Project Manager must facilitate a project kick off meeting with the support from the State’s Project Manager and the identified State resources to review the approach to accomplishing the project, schedule tasks and identify related timing, and identify any risks or issues related to the planned approach. From project kick-off until final acceptance and go-live, Contractor Project Manager must facilitate weekly meetings (unless meeting frequency is otherwise agreed upon by the parties) to provide updates on implementation progress. Following go-live, Contractor must facilitate monthly meetings (or more or less if determined necessary by the parties) to ensure ongoing support success.

The Contractor must attend meetings via video conference, at a time and in a manner identified by the State, at no additional cost to the State.

23. PROJECT CONTROL & REPORTS

If a new Project is initiated, once the Project Kick-Off meeting has occurred, the Contractor Project Manager will monitor project implementation progress and report to the State’s Project Manager on

a weekly basis, or a timeline mutually agreed upon by both managers, based on the project details, as outlined below:

- Progress to complete milestones, comparing forecasted completion dates to planned and actual completion dates
- Accomplishments during the reporting period, what was worked on and what was completed during the current reporting period
- Tasks planned for the next reporting period
- Identify any existing issues which are impacting the project 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

For clarity, routine maintenance and support of the Solution is expected under the terms of this Contract and may be performed by the Contractor without the need for a Contract Change notice. However, under no circumstance will any pricing or fees charged to the State be increased without a Contract Change Notice being executed in accordance with the terms of this Contract.

24. PROJECT MANAGEMENT

The Contractor Project 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.

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

SUITE Documentation

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

25. RESERVE

26. ADDITIONAL INFORMATION

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

SCHEDULE A – ATTACHMENT 1 – BUSINESS SPECIFICATION WORKSHEET

The Business Specifications Worksheet contains columns and is defined as follows:

Column A: Business Specification number.

Column B: Business Specification description.

Contractor must deliver Business Specifications as outlined below:

A	B
Business Specification Number	Business Specification
REQUIRED	
1.0	Solution must be certified PCI compliant
2.0	'Chain of custody' Solution must provide functionality to audit trails for changes in critical data outside of standard processes (tracking what/when/who) for all qualified circumstances.
3.0	Solution must allow permissions & role-based access management for a variety of State of Michigan (SOM) users, such as DNR admins, enforcement roles, data analysts, etc. and external users such as fishers (commercial, charter, baitfish, etc.), dealers, exporters, and tribal entities.

4.0	Contractor must enable secure review by CORA (Chippewa Ottawa Resource Authority).
5.0	Solution must provide flexible ongoing integration of new and unforeseen needs based on industry changes and new legislative mandates potentially unique to the State of Michigan.
6.0	Solution must allow seamless integration of a compatible platform/base application that will facilitate the use of existing modules owned by State of Michigan that are customized to DNR's business requirements.
7.0	Solution must provide delivery of a fully functioning database system with compatible schema design to house DNR's data that will integrate with existing DNR functionality and vendor provided platform/base application.
8.0	Contractor must provide migration, integration and preservation of existing data.
9.0	Contractor must keep wholesale seller data 'clean' and accurate, as this has been historically difficult, due to lack of validation means at the time of reporting.
10.0	Contractor must provide maintenance of above platform/base application along with maintenance of DNR customized functionality & modules.
11.0	Contractor must perform enhancements on both platform/base application as well as existing DNR customized functionality, features, components & modules.

SCHEDULE B - PRICING

A single all-inclusive subscription fee will be charged monthly.

The single fee is made up of a charge per module in use (itemized below). There is no per seat licensing involved nor any charges based on the number of users.

The fee covers:

- The use of the desired modules
- Bug fixes
- Support for admin staff
- User guide creation and updates
- System changes due to regulatory or legal changes that govern aspects of fisheries management
- Hosting fees
- Implementation (initial as well as bug fixes and enhancements)
- Backups
- Enhancements that do not raise the complexity or scope of a given module so much that it is no longer what it started as or the changes actually warrant a new module. If requested changes could lead to this, the State will be informed of the potential for a fee increase so that the State and the Contractor can come to an agreement. All other enhancements are included in the all-inclusive fee. The Jira issue tracking system will be used for change requests. Should the Contractor feel that a change request will involve a change in fees, that will be discussed and agreed to by both parties, in writing and through a Change Notice process.

Consumptive Charges

Must be paid by the Contractor and billed to the State on a monthly schedule. Consumptive Charges are not to exceed \$250/month.

Table A – Subscription Pricing Model for FACTS™ (Fishing Activity & Catch Tracking System) Modules (prices in USD)

Module Name	Monthly Fee	Quarterly Fee	Annual Fee
Commercial Fishery	\$3,080	\$9,240	\$36,960
Wholesale Purchases	\$3,080	\$9,240	\$36,960
Charter Fishery (Great Lakes and Inland Guides)	\$3,080	\$9,240	\$36,960
Baitfish Harvest	\$2,120	\$6,360	\$25,440
Baitfish Export	\$2,120	\$6,360	\$25,440
Licensing (for all modules above)	\$2,120	\$6,360	\$25,440
LED Vessel Inspections	\$2,120	\$6,360	\$25,440
Consumptive Charges	\$250	\$750	\$3,000

- ***The tables below reflect a 2% cost of business increase every 3rd year to cover increased costs over time.***

Annual Fee					
Modules	Year 1	Year 2	Year 3	Year 4	Year 5
Commercial Fishery	\$36,960	\$36,960	\$37,699	\$37,699	\$37,699
Wholesale Purchases	\$36,960	\$36,960	\$37,699	\$37,699	\$37,699
Charter Fishery (Great Lakes and Inland Guides)	\$36,960	\$36,960	\$37,699	\$37,699	\$37,699
Baitfish Harvest	\$25,440	\$25,440	\$25,949	\$25,949	\$25,949

Baitfish Export	\$25,440	\$25,440	\$25,949	\$25,949	\$25,949
Licensing (for all modules above)	\$25,440	\$25,440	\$25,949	\$25,949	\$25,949
LED Vessel Inspections	\$25,440	\$25,440	\$25,949	\$25,949	\$25,949
Consumptive Charges	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000
Annual Totals:	\$215,640	\$215,640	\$219,893	\$219,893	\$219,893
Grand Total for Base Years:					\$1,090,959.00

Annual Fee					
Modules	Option Year 6	Option Year 7	Option Year 8	Option Year 9	Option Year 10
Commercial Fishery	\$38,453	\$38,453	\$38,453	\$39,222	\$39,222
Wholesale Purchases	\$38,453	\$38,453	\$38,453	\$39,222	\$39,222
Charter Fishery (Great Lakes and Inland Guides)	\$38,453	\$38,453	\$38,453	\$39,222	\$39,222
Baitfish Harvest	\$26,468	\$26,468	\$26,468	\$26,997	\$26,997
Baitfish Export	\$26,468	\$26,468	\$26,468	\$26,997	\$26,997
Licensing (for all modules above)	\$26,468	\$26,468	\$26,468	\$26,997	\$26,997
LED Vessel Inspections	\$26,468	\$26,468	\$26,468	\$26,997	\$26,997

Consumptive Charges	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000
Annual Totals:	\$224,231	\$224,231	\$224,231	\$228,655	\$228,655
Grand Total for Option Years:					\$1,130,003.00

1. Postproduction Warranty. The Contractor must provide a 90 calendar days postproduction warranty at no cost to the State. The postproduction warranty will meet all requirements of the contract, including all Support Services identified in Schedule D.

2. Rate Card for Ancillary Professional Services.

Resource	On-Site Hourly Rate	Off-Site Hourly Rate
Senior Systems Developer	N/A	\$300

Invoice Requirements

All invoices submitted to the State must include: (a) date; (b) purchase order or delivery order; (c) quantity; (d) description of the Solution; (e) unit price; (f) shipping cost (if any); (g) Contractor-generated invoice number and (h) total price.

Travel and Expenses

The State does not pay for overtime or travel expenses.

SCHEDULE C - INSURANCE REQUIREMENTS

Master Agreement # 250000000719

- 1. General Requirements.** Contractor, at its sole expense, must maintain the insurance coverage as specified herein for the duration of the Term. Minimum limits may be satisfied by any combination of primary liability, umbrella or excess liability, and self-insurance coverage. To the extent damages are covered by any required insurance, Contractor waives all rights against the State for such damages. Failure to maintain required insurance does not limit this waiver.
- 2. Qualification of Insurers.** Except for self-insured coverage, all policies must be written by an insurer with an A.M. Best rating of A- VII or higher unless otherwise approved by DTMB Enterprise Risk Management.
- 3. Primary and Non-Contributory Coverage.** All policies for which the State of Michigan is required to be named as an additional insured must be on a primary and non-contributory basis.
- 4. Claims-Made Coverage.** If any required policies provide claims-made coverage, Contractor must:
 - a. Maintain coverage and provide evidence of coverage for at least 3 years after the later of the expiration or termination of the Contract or the completion of all its duties under the Contract;
 - b. Purchase extended reporting coverage for a minimum of 3 years after completion of work if coverage is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date of this Contract.
- 5. Proof of Insurance.**
 - a. Insurance certificates showing evidence of coverage as required herein must be submitted to DTMB-RiskManagement@michigan.gov within 10 days of the contract execution date.
 - b. Renewal insurance certificates must be provided on annual basis or as otherwise commensurate with the effective dates of coverage for any insurance required herein.
 - c. Insurance certificates must be in the form of a standard ACORD Insurance Certificate unless otherwise approved by DTMB Enterprise Risk Management.
 - d. All insurance certificates must clearly identify the Contract Number (e.g., notated under the Description of Operations on an ACORD form).
 - e. The State may require additional proofs of insurance or solvency, including but not limited to policy declarations, policy endorsements, policy schedules, self-insured certification or authorization, and audited financial statements.
 - f. In the event any required coverage is cancelled or not renewed, Contractor must provide written notice to DTMB Enterprise Risk Management no later than 5 business days following such cancellation or nonrenewal.

- 6. **Subcontractors.** Contractor is responsible for ensuring its subcontractors, if any, carry and maintain insurance coverage as applicable to the subcontracted service(s).
- 7. **Limits of Coverage & Specific Endorsements.**

Required Limits	Additional Requirements
Commercial General Liability Insurance	
Minimum Limits: \$1,000,000 Each Occurrence \$1,000,000 Personal & Advertising Injury \$2,000,000 Products/Completed Operations \$2,000,000 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 using endorsement CG 20 10 11 85, or both CG 20 10 12 19 and CG 20 37 12 19.
Workers' Compensation Insurance	
Minimum Limits: Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimum Limits: \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease	
Professional Liability (Errors and Omissions) Insurance	
Minimum Limits: \$3,000,000 Each Occurrence \$3,000,000 Annual Aggregate	

a. **Non-Waiver.** This Section 7 is not intended to and is not to 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.

- 8. **Notice of Non-Compliance.** Contractor consents to receiving electronic communications from a third-party service provider, Origami Risk, for the exclusive purpose of notifying Contractor of non-compliance with the requirements set forth in this Schedule C.

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9. **Non-Waiver.** This Schedule C is not intended to and is not to 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.

SCHEDULE D – SERVICE LEVEL AGREEMENT

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

“Actual Uptime” means the total minutes in the Service Period that the Solution is Available.

“Available” and **“Availability”** have correlative meanings and mean the Hosted Services and Software are available and operable for access and use by the State and its Authorized Users over the Internet in material conformity with the Contract without material performance degradation or inoperability of the Hosting Services or Software, in whole or in part.

“Availability Requirements” means the percentage of time in a Service Period, as set forth in this Schedule, that the Hosted Services and/or Software must be Available, excluding time the Hosted Services and/or Software is not Available solely because of one or more Exceptions.

“Availability Service Level Credits” means a credit of Fees, which credit is payable to the State for failure to meet the Availability Requirement, as set forth in this Schedule.

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

“Corrective Action Plan” means Contractor's written analysis of root causes of Service Errors and/or a Delinquency and Contractor's plan for correction of same, as required by and in such detail as required by and in such detail as required by this Schedule, and which upon written approval by the State, will constitute a Change Notice.

“Critical Service Error” has the meaning set forth in Subsection 3.6, Solution Support Service Level Table.

“Exceptions” means Scheduled Downtime or a degradation or inoperability of the Hosted Services solely because of failure of the State's or its Authorized Users' internet connectivity.

“High Service Error” has the meaning set forth in Subsection 3.6, Solution Support Service Level Table.

“Low Service Error” has the meaning set forth in Subsection 3.6, Solution Support Service Level Table.

“Medium Service Error” has the meaning set forth in Subsection 3.6, Solution Support Service Level Table.

“Resolve”, “Resolved”, “Resolution” and correlative capitalized terms mean, with respect to any particular Support Request, that Contractor has corrected the Service Error that prompted that Support Request and that the State has confirmed such correction and its acceptance of it in writing.

“RPO” or **“Recovery Point Objective”** means the maximum amount of potential data loss in the event of a disaster.

"RTO" or "Recovery Time Objective" means the maximum period of time to fully restore the Hosted Services in the case of a disaster.

"Scheduled Downtime" means a scheduled outage of the Hosting Services or Software, or a scheduled period of time during which Contractor is not required to meet the Availability Requirements, as set forth in this Schedule.

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

"Service Availability Report" means a report that describes the Availability and other performance of the Hosted Services and Software during the calendar month as compared to the Availability Requirement.

"Service Error" means any failure of any Hosted Service or the Software to be Available or otherwise perform in accordance with the Contract.

"Service Availability Failure" means the Availability Requirements is not met in a Service Period.

"Service Level Metrics" means the required Support Request Response and Resolution times referred to in the Solution Support Service Level Table.

"Service Period" means each calendar month during the Term and any additional periods during which Contractor does or is required to provide the Solution.

"Solution Support Services" means the maintenance and support services Contractor must provide as part of any Solution Contractor provides, as set forth in this Schedule.

"Support Hours" means office hours, 11am to 7pm Eastern, Monday through Friday.

"Support Service Level Credits" means the credit set forth in the Solution Support Service Level Credit Table.

"Support Service Level Failure" means a failure to meet the Service Level Metrics set forth in the Solution Support Service Level Table.

"Support Request" means the State's request for Contractor to Respond to and Resolve a Service Error.

"Support Request Classification" means the type and/or severity designation of a Support Request according to and corresponding to the Service Error Classification of a Service Error that is the subject of a Support Request.

"Support Request Response Time" means the period of time, beginning when Contractor receives a Support Request, within which Contractor must acknowledge, in writing, its receipt of the Support Request, as set forth in the Service Level Table.

2. Service Availability and Availability Service Level Credits.

2.1 Availability Requirement. Contractor will make the Hosted Services and Software Available, as measured over the course of each **"Service Period"**, at least 99.98% of the time. Availability will be calculated for the Service Period as follows: $(\text{Actual Uptime} - \text{Total Minutes in Service Period Hosted Services or Software are not Available Due to an Exception}) \div (\text{Scheduled Uptime} - \text{Total Minutes in Service Period Hosted Services or Software are not Available Due to an Exception}) \times 100 = \text{Availability}$.

2.2 Exceptions. No period of Hosted Services and/or Software degradation or inoperability will be included in calculating Availability to the extent that such downtime or degradation is due to one or more **Exceptions**.

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

2.4 Software Response Time. Software response time, defined as the interval from the time the end user sends a transaction to the time a visual confirmation of transaction completion is received, must be less than 10 seconds for 90% of all transactions. Unacceptable response times shall be considered to make the Software unavailable and will count against the calculation of Availability.

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

2.6 Remedies for Service Availability Failures.

(a) In the event of a Service Availability Failure, Contractor will issue to the State the Availability Service Level Credits described in the Service Availability Table below calculated as a percentage of the Fees payable for Hosted Services and Software provided during the applicable Service Period:

SERVICE AVAILABILITY TABLE

Availability	Availability Service Level Credits
≥99.8%	None
<99.8% but ≥97.2%	15%
<97.2% but ≥93.2%	50%
<93.2%	100%

(b) Any Availability Service Level Credits due under this **Subsection** will be applied in accordance with payment terms of the Contract.



(c) If a Service Availability Failure occurs in any 2 of 4 consecutive Service Periods, then, in addition to all other remedies available to the State, the State, in its sole discretion, consider it to be a material breach of the Contract.

3. Solution Support and Maintenance Services. Contractor will provide Solution maintenance and support services in accordance with the provisions of this **Section 3**. The Solution Support Services are included in the Services, and Contractor may not assess any additional fees, costs or charges, other than as stated in **Schedule B – Pricing Schedule**.

3.1 Support Service Responsibilities. Contractor will:

(a) resolve all Service Errors in accordance with the **Solution Support Service Level Table**, including by providing defect repair, programming corrections and remedial programming;

(b) provide unlimited telephone support during our office hours, 11am to 7pm Eastern, Monday through Friday. A number is provided for emergencies outside of office hours – 24 hours, 7 days a week. The Jira issue tracking system is also available to report non-emergencies 24 hours a day, 7 days a week.

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

(d) provide online access to Contractor’s ticket system;

(e) respond to and Resolve Support Requests as specified in this **Section 3**.

3.2 Service Monitoring and Management. Contractor will continuously monitor and manage the Hosted Services and Software to optimize Availability that meets or exceeds the Availability Requirement. Such monitoring and management includes:

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

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

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

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

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

Request Classification set forth in **Subsections 3.6**, or, if determined to be an internet provider problem, open a trouble ticket with the internet provider; and

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

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

(a) all updates, bug fixes, enhancements, Maintenance Releases, New Versions and other improvements to the Hosted Services and Software, including the Software, that Contractor provides at no additional charge to its other similarly situated customers; provided that Contractor shall consult with the State and is required to receive State approval prior to modifying or upgrading Hosted Services and Software, including Maintenance Releases and New Versions of Software; and

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

3.5 Support Requests. The State may submit a Support Request when the State experiences a Service Error. The State will include in its Support Request the applicable Support Request Classification and a description of the Service Error and the time the State first observed the Service Error. The State will submit each Support Request by e-mail or telephone.

3.6 Solution Support Service Level Table. As set out in the **Solution Support Service Level Table** below, applicable Service Level Metrics 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 Support Request Response time and (b) Resolved that Support Request, in the case of Support Request Resolution time. Contractor shall respond to and Resolve all Support Requests within the following times based on the State’s Support Request Classification, subject to the State’s written agreement to revise such designation after Contractor’s investigation of the reported Service Error:

RESPONSE AND RESOLUTION TIME SERVICE TABLE

Support Request Classification	Definition	Service Level Metric for Required Support Request Response Time	Service Level Metric for Required Support Request Resolution Time)
Critical Service Error	Any Service Error comprising or causing any of the following events or	Contractor shall acknowledge receipt	For Software: Contractor shall Resolve the Support Request as soon as practicable and no later than 4 hours

Support Request Classification	Definition	Service Level Metric for Required Support Request Response Time	Service Level Metric for Required Support Request Resolution Time)
	<p>effects issue affecting the entire system or a single critical production function:</p> <p>(a) Software down or operating in materially degraded state;</p> <p>(b) Data integrity at risk;</p> <p>(c) Material financial impact;</p> <p>(d) Widespread access interruptions: or</p> <p>(e) Classified by the state as a Critical Service Error</p>	<p>of a Support Request within 30 minutes.</p>	<p>after Contractor's receipt of the Support Request.</p>
<p>High Service Error</p>	<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</p>	<p>Contractor shall acknowledge receipt of a Support Request or, where applicable, the State's written acceptance of a Critical Service Error work-around, within 24 hours.</p>	<p>Contractor shall Resolve the Support Request as soon as practicable and no later than 2 Business Days after Contractor's receipt of the Support Request or, where applicable, the State's written acceptance of a Critical Service Error work-around.</p>

Support Request Classification	Definition	Service Level Metric for Required Support Request Response Time	Service Level Metric for Required Support Request Resolution Time)
	<p>impaired on a limited basis; or</p> <p>(d) performance issues of severe nature impacting critical processes</p>		
<p>Medium Service Error</p>	<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 Software functions; or</p> <p>(c) does not materially affect the State's use of the Software</p>	<p>Contractor shall acknowledge receipt of the Support Request within 2 Business Days.</p>	<p>Contractor shall Resolve the Support Request as soon as practicable and no later than 10 Business Days after Contractor's receipt of the Support Request.</p> <p>If Medium Service Error has not been resolved in 10 Business Days, the State may resubmit as a High Service Error.</p>
<p>Low Service Error</p>	<p>Request for assistance, information, or services that are routine in nature.</p>	<p>Contractor shall acknowledge receipt of the Support Request within 5 Business Days.</p>	<p>Contractor shall Resolve the Support Request as soon as practicable and no later than 60 Business Days after Contractor's receipt of the Support Request.</p> <p>If Low Service Error has not been resolved in 60 Business Days, the State may resubmit as a Medium Service Error.</p>

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

3.8 Support Service Level Credits. If the Contractor fails to meet a Service Level Metric for Support Request Response and/or Resolution Time, the State will be entitled to the corresponding Support Service Level Credits specified in the table below.

Solution Support Service Level Credit Table:

Support Request Classification	Support Service Level Credits (For Support Service Level Failure regarding Support Request Response Time)	Support Service Level Credits (For Support Service Level Failure regarding Support Request Resolution Time)
Critical Service Error	5% of the Fees for the month in which the initial Service Level Failure begins and 5% of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error is not responded to within the required response time.	5% of the Fees for the month in which the initial Service Level Failure begins and 5% of such monthly Fees for the first additional hour or portion thereof that the corresponding Service Error remains un-Resolved, which amount will thereafter double for each additional one-hour increment.
High Service Error	3% of the Fees for the month in which the initial Service Level Failure begins and 3% of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error is not responded to within the required response time.	3% of the Fees for the month in which the initial Service Level Failure begins and 3% of such monthly Fees for the first additional hour or portion thereof that the corresponding Service Error remains un-Resolved, which amount will thereafter double for each additional one-hour increment.

3.9 Corrective Action Plan. If two or more Critical Service Errors occur in any 60 day period during (a) the Term or (b) any additional periods during which Contractor does or is required to perform any Hosted Services, Contractor will promptly investigate the root causes of these Service Errors and provide to the State within 5 Business Days of its receipt of notice of the second such Support Request an analysis of such root causes and a proposed written corrective action plan for the State’s review, comment and approval, which, subject to and upon the State’s written approval, shall be a part of, and by this reference is incorporated in, the Contract as the parties’ corrective action plan (the “**Corrective Action Plan**”). The Corrective Action Plan must include, at a minimum: (a) Contractor’s

commitment to the State to devote the appropriate time, skilled personnel, systems support and equipment and other resources necessary to Resolve and prevent any further occurrences of the Service Errors giving rise to such Support Requests; (b) a strategy for developing any programming, software updates, fixes, patches, etc. necessary to remedy, and prevent any further occurrences of, such Service Errors; and (c) time frames for implementing the Corrective Action Plan. There will be no additional charge for Contractor's preparation or implementation of the Corrective Action Plan in the time frames and manner set forth therein.

4. Issuance of Applicable Credits. Contractor will, for each invoice period, issue to the State, together with Contractor's invoice for such period, a written acknowledgement setting forth all Availability Service Credits and Support Level Credits to which the State has become entitled during that invoice period. Contractor shall pay the amount of applicable credit(s) as a debt to the State within 15 Business Days of issue of the applicable credit from the amount payable by the State to Contractor pursuant to such invoice. If the Fees for Hosted Services and/or the Support Fee is paid other than monthly, the applicable fee will be converted to its monthly equivalent for purposes of determining the Availability Service Credit and/or Support Service Level Credit based on the percentages in the applicable tables in this Schedule.

5. Additional Remedies for Service Level Failures. Contractor's repeated failure to meet the Service Level Metric(s) 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 Solution Support Service Level Table will constitute a material breach of the Contract.

6. Data Storage, Backup, Restoration and Disaster Recovery. Contractor must maintain or cause to be maintained backup redundancy and disaster avoidance and recovery procedures designed to safeguard State Data and the State's other Confidential Information, Contractor's Processing capability and the availability of the Hosted Services and Software, in each case throughout the Term and at all times in connection with its actual or required performance of the Services hereunder. All backed up State Data shall be located in the United States. The force majeure provisions of this Contract do not limit Contractor's obligations under this section.

6.1 Data Storage. Contractor will provide sufficient storage capacity to meet the needs of the State at no additional cost.

6.2 Data Backup. Contractor will conduct, or cause to be conducted, daily back-ups of State Data and perform, or cause to be performed, other periodic offline back-ups of State Data on at least a weekly basis and store and retain such back-ups as specified in **Schedule A**. Contractor must, within 5 Business Days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of State Data in the format mutually agreed upon, in writing, by both parties.

6.3 Data Restoration. If the data restoration is required due to the actions or inactions of the Contractor or its subcontractors, Contractor will promptly notify the State and complete actions required to restore service to normal production operation. If requested, Contractor will restore data from a backup upon written notice from the State. Contractor

will restore the data within 1 Business Day of the State's request. Contractor will provide data restorations at its sole cost and expense.

6.4 Disaster Recovery. Throughout the Term and at all times in connection with its actual or required performance of the Services, Contractor will maintain and operate a backup and disaster recovery plan to achieve a Recovery Point Objective (RPO) of Recovery point Objective 72 hours, and a Recovery Time Objective (RTO) of Recovery Time Objective 72 hours (the "**DR Plan**"), and implement such DR Plan in the event of any unplanned interruption of the Hosted Services. Contractor's current DR Plan, revision history, and any reports or summaries relating to past testing of or pursuant to the DR Plan are attached as **Schedule F**. Contractor will actively test, review and update the DR Plan on at least an annual basis using industry best practices as guidance. Contractor will provide the State with copies of all such updates to the Plan within 15 days of its adoption by Contractor. All updates to the DR Plan are subject to the requirements of this **Section 4**; and provide the State with copies of all reports resulting from any testing of or pursuant to the DR Plan promptly after Contractor's receipt or preparation. If Contractor fails to reinstate all material Hosted Services and Software within the periods of time set forth in the DR Plan, the State may, in addition to any other remedies available under this Contract, in its sole discretion, immediately terminate this Contract as a non-curable default.

SCHEDULE D – ATTACHMENT 1 – CONTACT LIST

The order of contact methods to use is:

- For non-emergencies, submit an issue ticket in Jira (jira.fisheryfacts.com). All admins have accounts in Jira and can submit these tickets.
- For emergencies, call Bryan Stevenson at 250-920-8830.

The above methods should be used at all times as below:

- Normal Hours (Monday to Friday 8AM to 7PM eastern)
- Outside Normal Hours (including Canadian statutory holidays)

In the event of an emergency and Bryan Stevenson is not available at his phone number listed above OR if a Jira ticket is not assigned to a FACTS staff member in a reasonable time frame, try these other staff members in order:

Bryan Stevenson (if not emergency) – 250-920-8830 or bryan@fisheryfacts.com

Kit Brandner – 604-817-1834 or kit@fisheryfacts.com

Baleze Danoit - 587-770-2284 or baleze@fisheryfacts.com

SCHEDULE E – DATA SECURITY REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

3. Contractor Responsibilities. Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to:

- (a) ensure the security and confidentiality of the State Data;
- (b) protect against any anticipated threats or hazards to the security or integrity of the State Data;
- (c) protect against unauthorized disclosure, access to, or use of the State Data;
- (d) ensure the proper disposal of any State Data in Contractor’s or its subcontractor’s possession; and
- (e) ensure that all Contractor Personnel comply with the foregoing.

The State has established Information Technology (IT) PSPs to protect IT resources under the authority outlined in the overarching State 1305.00 Enterprise IT Policy. In no case will the safeguards of Contractor’s data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable

public and non-public State IT policies and standards, of which the publicly available ones are at <https://www.michigan.gov/dtmb/policies/it-policies>.

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

4. Acceptable Use Standard. To the extent that Contractor has access to the State's IT environment, Contractor must comply with the State's Acceptable Use Standard, see <https://www.michigan.gov/dtmb/-/media/Project/Websites/dtmb/Law-and-Policies/IT-Policy/13400013002-Acceptable-Use-of-Information-Technology-Standard.pdf>. All Contractor Personnel will be required, in writing, to agree to the State's Acceptable Use Standard before accessing State systems or Data. The State reserves the right to terminate Contractor's and/or subcontractor(s) or any Contractor Personnel's access to State Systems if the State determines a violation has occurred.

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

5.1 If Hosted Services are provided by a Hosting Provider, ensure each Hosting Provider maintains FedRAMP authorization or an SSAE SOC 2 Type II audit for all Hosted Services environments throughout the Term, and in the event a Hosting Provider is unable to maintain FedRAMP authorization or an SSAE SOC 2 Type II audit, the State, at its sole discretion, may either a) require the Contractor to move the Software and State Data to an alternative Hosting Provider selected and approved by the State at Contractor's sole cost and expense without any increase in Fees, or b) immediately terminate this Contract for cause;

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

5.3 ensure that the Software and State Data is securely stored, hosted, supported, administered, Accessed, and backed up in the United States or its territories or Canada. The use of Offshore Resources outside of Canada is not permitted;

5.4 ensure that any Customization development work is performed in the United States, its territories or Canada;

5.5 ensure the data center(s) in which Software and State Data resides minimally meets Uptime Institute Tier 3 standards (<https://www.uptimeinstitute.com/>), or its equivalent;

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

5.7 Throughout the Term, Contractor must not provide any part of the Solution from the list of excluded parties in the [System for Award Management \(SAM\)](#) for entities excluded from receiving federal government awards for "covered telecommunications equipment or services.

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

5.9 take all reasonable measures to:

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

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

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

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

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

5.13 Contractor must permanently sanitize or destroy the State's information, including State Data, from all media both digital and nondigital including backups using National Security Agency ("NSA") and/or National Institute of Standards and Technology ("NIST") (NIST Guide for Media Sanitization 800-88) data sanitization methods or as otherwise instructed by the State. Contractor must sanitize information system media, both digital and non-digital, prior to disposal, release out of its control, or release for reuse as specified above.

6. Security Accreditation Process. Throughout the Term, Contractor will assist the State, at no additional cost, with its **Security Accreditation Process**, which includes the development, completion and on-going maintenance of a system security plan (SSP) using the State's automated governance, risk and compliance (GRC) platform, which requires Contractor to submit evidence, upon request from the State, in order to validate Contractor's security controls within two weeks of the State's request. On an annual basis, or as otherwise required by the State such as for significant changes, re-assessment of the system's controls will be required to receive and

maintain authority to operate (ATO). All identified risks from the SSP will be remediated through a Plan of Action and Milestones (POAM) process with remediation time frames and required evidence based on the risk level of the identified risk. For all findings associated with the Contractor's solution, at no additional cost, Contractor will be required to create or assist with the creation of State approved POAMs, perform related remediation activities, and provide evidence of compliance. The State will make any decisions on acceptable risk, Contractor may request risk acceptance, supported by compensating controls, however only the State may formally accept risk. Failure to comply with this section will be deemed a material breach of the Contract.

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

8. Security Audits.

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

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

8.3 During the Term, Contractor will, when requested by the State, provide a copy of Contractor's and Hosting Provider's (if applicable) FedRAMP System Security Plan(s) or SOC 2 Type 2 report(s) to the State within two weeks of the State's request. The System

Security Plan and SSAE audit reports will be recognized as Contractor's Confidential Information.

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

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

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

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

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

(a) Contractor must either a) grant the State the right to dynamically scan a deployed version of the Software; or

(b) in lieu of the State performing the scan, Contractor must dynamically scan a deployed version of the Software using a State approved application scanning tool, and provide the State with a vulnerabilities assessment after Contractor has completed such scan. These scans and assessments

(i) must be completed and provided to the State quarterly (dates to be provided by the State) and for each major release; and

(ii) scans must be completed in a non-production environment with verifiable matching source code and supporting infrastructure configurations or the actual production environment.

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

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

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

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

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

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

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

10. Infrastructure Scanning.

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

11. Nonexclusive Remedy for Security Breach.

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

SCHEDULE E, ATTACHMENT 1 – PCI COMPLIANCE AND CEPAS

1. PCI Compliance.

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

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

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

Without limiting Contractor’s obligations of indemnification as further described in this Contract, Contractor must indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys’ fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the breach.

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

The Contractor must provide the State’s Contract Administrator with an annual Attestation of Compliance (AOC) if or a Report on Compliance (ROC) showing the contractor is in compliance with the PCI Data Security Standard. The Contractor must notify the State’s Contract Administrator of all failures to comply with the PCI Data Security Standard.

2. CEPAS Electronic Receipt Processing Standard.

All electronic commerce applications that allow for electronic receipt of credit or debit card and electronic check transactions must be processed via the State’s Centralized Electronic Payment Authorization System (CEPAS). To minimize the risk to the State, full credit/debit card numbers, sensitive authentication data, and full bank account information must never be stored on state-



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owned IT resources. For additional information, refer to the CEPAS Integration Guide that can be found at:

SCHEDULE F – DISASTER RECOVERY PLAN

Disaster Recovery Plan on file with DTMB Agency Services.

SCHEDULE G – TRANSITION OUT

The data must be provided to the State, or their identified replacement Contractor, in a format mutually agreed to and documented in writing, during transition planning.

Contractor would need to package up the collected State data in a format the State desires. If for some reason we cannot match the desired format, we would provide alternate options.

It is the preference of the State for the Contractor to provide the State data into a separate SQL database of the State's choosing. Alternatively, Contractor will provide data extracts from FACTS' data tables including foreign keys to ensure the data relationships is preserved.

This can be done with CSV file data extracts from FACTS data tables including foreign keys so that data relationships can be preserved. Alternately we could pull the State Data from our database into a set of new data tables and provide a Microsoft SQL Server database containing only State data (which would also preserve foreign key constraints).

No matter which method is used, Contractor must provide the State and/or the new Contractor with documentation and working sessions to explain the data and data structure.

User manuals must be supplied as they explain most of the features that exists (save some admin features which must be explained in working sessions could explain as needed).