



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

**CONTRACT CHANGE NOTICE**

Change Notice Number **5**  
 to  
 Contract Number **20000000496**

<b>CONTRACTOR</b>	GED TESTING SERVICE LLC
	5601 Green Valley Drive
	Bloomington, MN 55437
	Vicki Greene
	952-681-3820
	vicki.greene@ged.com
	CV0013213

<b>STATE</b>	<b>Program Manager</b>	David Derks	MDOC
		213-773-9200	
		derksd@michigan.gov	
	<b>Contract Administrator</b>	Susan Watt-Smith	DTMB
		517-230-0535	
		wattsmiths@michigan.gov	

**CONTRACT SUMMARY**

<b>HIGH SCHOOL EQUIVALENCY TESTING SERVICES</b>			
<b>INITIAL EFFECTIVE DATE</b>	<b>INITIAL EXPIRATION DATE</b>	<b>INITIAL AVAILABLE OPTIONS</b>	<b>EXPIRATION DATE BEFORE</b>
April 1, 2020	March 31, 2021	7 - 1 Year	March 31, 2024
<b>PAYMENT TERMS</b>		<b>DELIVERY TIMEFRAME</b>	
NET 45			
<b>ALTERNATE PAYMENT OPTIONS</b>			<b>EXTENDED PURCHASING</b>
<input type="checkbox"/> P-Card <input type="checkbox"/> PRC <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**MINIMUM DELIVERY REQUIREMENTS**

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**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	4	<input type="checkbox"/>		March 31, 2028
<b>CURRENT VALUE</b>		<b>VALUE OF CHANGE NOTICE</b>		<b>ESTIMATED AGGREGATE CONTRACT VALUE</b>
\$960,000.00		\$960,000.00		\$1,920,000.00

**DESCRIPTION**

Effective March 28th, 2023, the following changes are hereby incorporated into this Contract:

- This Contract is exercising 4 remaining option years and is increased by \$960,000.00. The revised expiration date is March 31, 2028.
- The State Contract Administrator has been changed to Susan Watt-Smith, wattsmiths@michigan.gov, 517-230-0535.

All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement approval.



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

**CONTRACT CHANGE NOTICE**

Change Notice Number 4

to

Contract Number **20000000496 - Revised**

<b>CONTRACTOR</b>	GED TESTING SERVICE LLC
	5601 Green Valley Drive
	Bloomington, MN 55437
	Vicki Greene
	952-681-3820
	vicki.greene@ged.com
	CV0013213

<b>STATE</b>	<b>Program Manager</b>	David Derks	MDOC
		213-773-9200	
		derksd@Michigan.gov	
	<b>Contract Administrator</b>	Melissa Beck	DTMB
		(517) 897-1502	
		beckm3@michigan.gov	

**CONTRACT SUMMARY**

<b>HIGH SCHOOL EQUIVALENCY TESTING</b>			
<b>INITIAL EFFECTIVE DATE</b>	<b>INITIAL EXPIRATION DATE</b>	<b>INITIAL AVAILABLE OPTIONS</b>	<b>EXPIRATION DATE BEFORE</b>
April 1, 2020	March 31, 2021	7 - 1 Year	March 31, 2023
<b>PAYMENT TERMS</b>		<b>DELIVERY TIMEFRAME</b>	
NET 45		NA	
<b>ALTERNATE PAYMENT OPTIONS</b>			<b>EXTENDED PURCHASING</b>
<input type="checkbox"/> P-Card	<input type="checkbox"/> PRC	<input type="checkbox"/> Other	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

<b>MINIMUM DELIVERY REQUIREMENTS</b>
NA

<b>DESCRIPTION OF CHANGE NOTICE</b>				
<b>OPTION</b>	<b>LENGTH OF OPTION</b>	<b>EXTENSION</b>	<b>LENGTH OF EXTENSION</b>	<b>REVISED EXP. DATE</b>
<input checked="" type="checkbox"/>	1 year	<input type="checkbox"/>		March 31, 2024
<b>CURRENT VALUE</b>	<b>VALUE OF CHANGE NOTICE</b>	<b>ESTIMATED AGGREGATE CONTRACT VALUE</b>		
\$720,000.00	\$240,000.00	\$960,000.00		

**DESCRIPTION**

Effective February 2, 2023, the following changes are hereby incorporated into this Contract:

1. This Contract is exercising the 3rd available option year and is increased by \$240,000.00. The revised expiration date is March 31, 2024.
2. The State Contract Administrator has been changed to Melissa Beck, beckm3@michigan.gov, 517-897-1502.
3. The State Program Manager has been changed to David Derks, derksd@michigan.gov, 213-773-9200.

All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement approval.



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

**CONTRACT CHANGE NOTICE**

Change Notice Number **4**  
 to  
 Contract Number **200000000496**

<b>CONTRACTOR</b>	GED TESTING SERVICE LLC
	5601 Green Valley Drive
	Bloomington, MN 55437
	Vicki Greene
	952-681-3820
	vicki.greene@ged.com
	CV0013213

<b>STATE</b>	<b>Program Manager</b>	Tony Costello	MDOC
		517-373-7204	
		CostelloC@Michigan.gov	
	<b>Contract Administrator</b>	Melissa Beck	DTMB
		(517) 897-1502	
		beckm3@michigan.gov	

**CONTRACT SUMMARY**

<b>HIGH SCHOOL EQUIVALENCY TESTING</b>			
<b>INITIAL EFFECTIVE DATE</b>	<b>INITIAL EXPIRATION DATE</b>	<b>INITIAL AVAILABLE OPTIONS</b>	<b>EXPIRATION DATE BEFORE</b>
April 1, 2020	March 31, 2021	7 - 1 Year	March 31, 2023
<b>PAYMENT TERMS</b>		<b>DELIVERY TIMEFRAME</b>	
NET 45		NA	
<b>ALTERNATE PAYMENT OPTIONS</b>			<b>EXTENDED PURCHASING</b>
<input type="checkbox"/> P-Card	<input type="checkbox"/> PRC	<input type="checkbox"/> Other	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

<b>MINIMUM DELIVERY REQUIREMENTS</b>
NA

<b>DESCRIPTION OF CHANGE NOTICE</b>				
<b>OPTION</b>	<b>LENGTH OF OPTION</b>	<b>EXTENSION</b>	<b>LENGTH OF EXTENSION</b>	<b>REVISED EXP. DATE</b>
<input checked="" type="checkbox"/>	1 year	<input type="checkbox"/>		March 31, 2024
<b>CURRENT VALUE</b>	<b>VALUE OF CHANGE NOTICE</b>	<b>ESTIMATED AGGREGATE CONTRACT VALUE</b>		
\$720,000.00	\$240,000.00	\$960,000.00		

**DESCRIPTION**

Effective February 2, 2023, the following changes are hereby incorporated into this Contract:

- This Contract is exercising the 3rd available option year and is increased by \$240,000.00. The revised expiration date is March 31, 2024.
- The State Contract Administrator has been changed to Melissa Beck, beckm3@michigan.gov, 517-897-1502.

All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement approval.



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

**CONTRACT CHANGE NOTICE**

Change Notice Number **3**  
 to  
 Contract Number **200000000496**

<b>CONTRACTOR</b>	GED TESTING SERVICE LLC
	5601 Green Valley Drive
	Bloomington, MN 55437
	Vicki Greene
	952-681-3820
	vicki.greene@ged.com
	CV0013213

<b>STATE</b>	<b>Program Manager</b>	Tony Costello	MDOC
		517-373-7204	
		CostelloC@Michigan.gov	
	<b>Contract Administrator</b>	Jillian Yeates	DTMB
		(517) 275-1131	
		yeatesj@michigan.gov	

**CONTRACT SUMMARY**

<b>HIGH SCHOOL EQUIVALENCY TESTING</b>			
<b>INITIAL EFFECTIVE DATE</b>	<b>INITIAL EXPIRATION DATE</b>	<b>INITIAL AVAILABLE OPTIONS</b>	<b>EXPIRATION DATE BEFORE</b>
April 1, 2020	March 31, 2021	7 - 1 Year	March 31, 2022
<b>PAYMENT TERMS</b>		<b>DELIVERY TIMEFRAME</b>	
NET 45		N/A	
<b>ALTERNATE PAYMENT OPTIONS</b>			<b>EXTENDED PURCHASING</b>
<input type="checkbox"/> P-Card	<input type="checkbox"/> PRC	<input type="checkbox"/> Other	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

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

**DESCRIPTION OF CHANGE NOTICE**

<b>OPTION</b>	<b>LENGTH OF OPTION</b>	<b>EXTENSION</b>	<b>LENGTH OF EXTENSION</b>	<b>REVISED EXP. DATE</b>
<input checked="" type="checkbox"/>	1 Year	<input type="checkbox"/>		March 31, 2023
<b>CURRENT VALUE</b>	<b>VALUE OF CHANGE NOTICE</b>	<b>ESTIMATED AGGREGATE CONTRACT VALUE</b>		
\$480,000.00	\$240,000.00	\$720,000.00		

**DESCRIPTION**

Effective March 29, 2022, the following changes are hereby incorporated into this Contract:

- This Contract is exercising the 2nd available option year and is increased by \$240,000.00. The revised expiration date is March 31, 2023.
- Schedule A, Section 8), g), is modified to replace the reference of the Offender Contact Exception Request from CAJ-349 to CAJ-202.

All other terms, conditions, specifications, and pricing remain the same. Per Contractor and Agency agreement, DTMB Central Procurement Services approval, and State Administrative Board approval on March 29, 2022.



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

**CONTRACT CHANGE NOTICE**

Change Notice Number **2**  
 to  
 Contract Number **200000000496**

<b>CONTRACTOR</b>	GED TESTING SERVICE LLC
	5601 Green Valley Drive
	Bloomington, MN 55437
	Vicki Greene
	952-681-3820
	vicki.greene@ged.com
	CV0013213

<b>STATE</b>	<b>Program Manager</b>	Tony Costello	MDOC
		517-373-7204	
		CostelloC@Michigan.gov	
	<b>Contract Administrator</b>	Jillian Yeates	DTMB
		(517) 275-1131	
		yeatesj@michigan.gov	

**CONTRACT SUMMARY**

HIGH SCHOOL EQUIVALENCY TESTING

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
April 1, 2020	March 31, 2021	7 - 1 Year	March 31, 2021

PAYMENT TERMS	DELIVERY TIMEFRAME
NET 45	N/A

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

**MINIMUM DELIVERY REQUIREMENTS**  
 N/A

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1 Year	<input type="checkbox"/>		March 31, 2022

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
\$240,000.00	\$240,000.00	\$480,000.00

**DESCRIPTION**

Effective November 16, 2020, this Contract is exercising the first option year and is increased by \$240,000.00. The revised Contract expiration date is March 31, 2022.

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



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

**CONTRACT CHANGE NOTICE**

Change Notice Number **1**  
 to  
 Contract Number **200000000496**

<b>CONTRACTOR</b>	GED TESTING SERVICE LLC
	5601 Green Valley Drive
	Bloomington, MN 55437
	Vicki Greene
	952-681-3820
	vicki.greene@ged.com
	CV0013213

<b>STATE</b>	<b>Program Manager</b>	Tony Costello	MDOC
		517-373-7204	
		CostelloC@Michigan.gov	
	<b>Contract Administrator</b>	Jillian Yeates	DTMB
		(517) 275-1131	
		yeatesj@michigan.gov	

**CONTRACT SUMMARY**

**HIGH SCHOOL EQUIVALENCY TESTING**

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
April 1, 2020	March 31, 2021	7 - 1 Year	March 31, 2021

PAYMENT TERMS	DELIVERY TIMEFRAME
NET 45	N/A

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

MINIMUM DELIVERY REQUIREMENTS
N/A

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		N/A

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
\$240,000.00	\$0.00	\$240,000.00

**DESCRIPTION**

Effective June 15, 2020, the following amendment is hereby incorporated into this Contract per the attached Revised Attachment A:

The Section reference of Schedule A: Statement of Work, Requirements, General Requirements, 1.2 Scoring Services is corrected to Schedule A: Statement of Work, Requirements, General Requirements, 1.b Scoring Services.

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

**MICHIGAN DEPARTMENT OF CORRECTIONS**  
 Procurement, Monitoring, and Compliance Division  
 Service Level Agreement – Revised Attachment A

<b>Agency/Vendor: GED Testing Service, LLC</b>
<b>Contract #: 20000000496</b>
<b>Effective Date: 4/1/2020</b>
<b>Metric: 1. Scoring Timelines</b>
<b>Definition and Purpose</b>
The Contractor must provide scoring services, notify the State of scores, and provide scores to State's current transcript and diploma subcontractor, DiplomaSender (or in the event of the State's change in subcontractor to GEDTS's subcontractor, Parchment), within 5 business days (electronic scoring) and 30 calendar days (paper scoring) for each prisoner who completes the entire testing in accordance with Schedule A: Statement of Work, Requirements, General Requirements, 1.b Scoring Services.
<b>Data Source:</b>
Transmission Date (Computer-based examinations)/Mailing Date (Paper-based examinations) Receipt Date (Date scores are received by institution conducting examinations)
<b>Methodology:</b>
The Michigan Department of Corrections (MDOC) will review the receipt date of the scores against the transmission date to determine if the scoring is being completed in accordance with Schedule A: Statement of Work, Requirements, General Requirements, 1.b Scoring Services.
<b>Acceptable Standard:</b>
Computer-based scoring is to be completed and score is received within 5 business days of test completion. Paper scoring is to be completed and made available to the scoring facility within 30 calendar days of the mailing date. Each calendar day a test is not scored past the specified timeframe per test shall be considered an occurrence.
<b>Amount for Failing to Meet Service Level Agreement</b>
A credit of \$100.00 will be assessed for each instance a score is not received as identified in the Acceptable Standard section above. For any credit that is assessed, the current payable due to the Contractor will be reduced, or a subsequent invoice will be reduced by \$100.00 per instance. Extenuating circumstances will be reviewed by MDOC Contract Manager before any Service Credits are assessed.



**STATE OF MICHIGAN PROCUREMENT**  
 Department of Technology, Management & Budget  
 Central Procurement Services  
 525 W. Allegan St., 1<sup>st</sup> Floor. NE, Lansing, MI 48913  
 P.O. Box 30026, Lansing, MI 48909

**NOTICE OF CONTRACT**

NOTICE OF CONTRACT NO. **200000000496**  
 between  
 THE STATE OF MICHIGAN  
 and

<b>CONTRACTOR</b>	GED Testing Service LLC
	5601 Green Valley Drive
	Bloomington, MN 55437
	Vicki Greene
	(952) 681-3820
	vicki.greene@ged.com
	CV0013213

<b>STATE</b>	Program Manager	Tony Costello	MDOC
		517-373-7204	
	CostelloT@michigan.gov		
	Contract Administrator	Jillian Yeates	DTMB
517-275-1131			
yeatesj@michigan.gov			

<b>CONTRACT SUMMARY</b>			
<b>DESCRIPTION: High School Equivalency Testing Services</b>			
<b>INITIAL EFFECTIVE DATE</b>	<b>INITIAL EXPIRATION DATE</b>	<b>INITIAL AVAILABLE OPTIONS</b>	<b>EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW</b>
4/1/2020	3/31/2021	7, 1 Year Options	3/31/2021
<b>PAYMENT TERMS</b>		<b>DELIVERY TIMEFRAME</b>	
Net 45		N/A	
<b>ALTERNATE PAYMENT OPTIONS</b>			<b>EXTENDED PURCHASING</b>
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>MINIMUM DELIVERY REQUIREMENTS</b>			
N/A			
<b>MISCELLANEOUS INFORMATION</b>			
<b>THIS IS NOT AN ORDER.</b> This Contract Agreement is awarded on the basis of RFP #200000000349 and related negotiations. Orders for services will be issued directly by Departments through the issuance of a Delivery Order (DO) form.			
<b>ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION</b>			<b>\$240,000.00</b>



**FOR THE CONTRACTOR:**

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

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

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

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

**FOR THE STATE:**

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

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

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

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

## Standard Contract Terms

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and GED Testing Service LLC (“**Contractor**”), a Delaware Limited Liability Company. This Contract is effective on April 1, 2020 (“**Effective Date**”), and unless terminated, expires on March 31, 2021.

This Contract may be renewed for up to seven (7) additional one-year (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 Contract Change Notice.

The parties agree as follows:

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

“**Accept**” has the meaning set forth in **Section 20**.

“**Acceptance**” has the meaning set forth in **Section 20**.

“**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 33**.

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

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

“Change” has the meaning set forth in **Section 5**.

“Change Notice” has the meaning set forth in **Section 5**.

“Change Proposal” has the meaning set forth in **Section 5**.

“Change Request” has the meaning set forth in **Section 5**.

“Confidential Information” has the meaning set forth in **Section 38.a**.

“**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 Activities**” refers to the includes the Services, Deliverables, delivery of commodities, or other contractual requirements set forth in **Schedule A – Statement of Work**, including any

subsequent Statement(s) of Work, that the Contractor agrees to provide and the State agrees to purchase pursuant to the terms of this Contract.

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

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

“**Contractor’s Bid Response**” means the Contractor’s proposal submitted in response to the State’s requests to obtain Contract Activities.

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

“**Deliverables**” means all materials, including, but not limited to Software, Documentation, written materials and commodities, 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 **Schedule A - Statement of Work**.

“**Dispute Resolution Procedure**” has the meaning set forth in **Section 55**.

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

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

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

“**Fees**” means collectively all fees collected by the Contractor pursuant to the terms of this Contract.

“**Financial Audit Period**” has the meaning set forth in **Section 42**.

“**Force Majeure**” has the meaning set forth in **Section 54**.

“**HIPAA**” has the meaning set forth in **Section 47**.

“**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 **Schedule A – Statement of Work**.

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

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

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

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

**“Permitted Subcontractor”** has the meaning set forth in **Section 13**.

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

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

**“Pricing Schedule”** means the schedule attached as **Schedule B**, setting forth the Fees, rates and Pricing payable under this Contract.

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

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

**“RFP”** means the State's request designed to solicit responses for Contract Activities under this Contract.

**“Software”** means Contractor's software set forth in the Statement of Work, and any Maintenance Releases or New Versions provided to the State and any Configurations made by or for the State pursuant to this Contract, and all copies of the foregoing permitted under this Contract and the License Agreement.

“**Services**” means any of the services Contractor is required to or otherwise does provide under this Contract, **Schedule A** - Statement of Work, **Schedule C** - Software Terms for On-site Hosting (if applicable), and **Schedule E** – Contractor Hosted Software and Services (if applicable).

“**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.

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

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

“**State Data**” has the meaning set forth in **Section 37.a**.

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

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

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

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

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

“**Transition Period**” has the meaning set forth in **Section 31**.

“**Transition Responsibilities**” has the meaning set forth in **Section 31**.

“**Unauthorized Removal**” has the meaning set forth in **Section 15**.

“**Unauthorized Removal Credit**” has the meaning set forth in **Section 15**.

“**Warranty Period**” means the period set forth in Schedule A, the Statement of Work, commencing on the date of acceptance of all Deliverables purchased pursuant to the terms of this Contract.

“**Work Product**” means all State-specific deliverables that Contractor is required to, or otherwise does, provide to the State under this Contract including but not limited to written materials, computer

scripts, software configuration, software customization, APIs, 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. Work Product does not include software.

- 2. Duties of Contractor.** Contractor must perform the Services and provide the Deliverables described in **Schedule A – Statement of Work**. An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in **Schedule A**.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

- 3. Statement(s) of Work.** Contractor shall provide the Contract Activities pursuant to Statements of Work entered into under this Contract. No Statement of Work shall be effective unless signed by each party's Contract Administrator. The term of each Statement of Work shall commence on the parties' full execution of the Statement of Work and terminate when the parties have fully performed their obligations. The terms and conditions of this Contract will apply at all times to any Statements of Work entered into by the parties and attached as a schedule to this Contract. The State shall have the right to terminate such Statement of Work as set forth in **Sections 25 and 26**. Contractor acknowledges that time is of the essence with respect to Contractor's obligations under each Statement of Work and agrees that prompt and timely performance of all such obligations in accordance with this Contract and the Statements of Work is strictly required.
- 4. Statement of Work Requirements.** Each Statement of Work may include the following: (a) names and contact information for Contractor's Contract Administrator, Program Manager and Key Personnel; (b) names and contact information for the State's Contract Administrator, Program Manager and Business Owner; (c) a detailed description of the Services to be provided under this Contract, including any training obligations of Contractor; (d) a detailed description of the Deliverables to be provided under this Contract; (e) a description of all liquidated damages associated with this Contract, if any; and (f) a detailed description of all State Resources, if any, required to complete the Implementation Plan, if such a Plan is necessary.
- 5. Change Control Process.** The State may at any time request in writing (each, a "Change Request") changes to the Statement of Work, including changes to the Contract Activities (each, a "Change"). Upon the State's submission of a Change Request, the parties will evaluate and implement all Changes in accordance with this **Section 5**. No Change will be effective until the parties have executed a Change Notice. Except as the State may request in its Change Request or otherwise in writing, Contractor must continue to perform its obligations in accordance with the Statement of Work pending negotiation and execution of a Change Notice. Contractor will use its best efforts to limit any delays or Fee increases from any Change to those necessary to perform the Change in accordance with the applicable Change Notice. 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.
- 6. Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier;

(b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

<b>State:</b>	<b>Contractor:</b>
Jillian Yeates 525 W. Allegan St. 1st Floor NE PO Box 30026 Lansing, MI 48909 yeatesj@Michigan.gov 517-275-1131	Vicki Greene 5601 Green Valley Drive Bloomington, MN 55437 vicki.greene@ged.com (952) 681-3820
<b>The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a "Program Manager"):</b>	
Tony Costello Grandview Plaza, 5th Floor PO Box 30003 Lansing, MI 48909 costellot@michigan.gov  (517) 373-7204	Vicki Greene 5601 Green Valley Drive Bloomington, MN 55437 vicki.greene@ged.com (952) 681-3820
<b>The Contract Manager for each party will monitor overall contract compliance.</b>	
Destinie Shipman Grandview Plaza, 5 <sup>th</sup> Floor PO Box 30003 Lansing, MI 48909 shipmand@michigan.gov (517) 335-2080	Vicki Greene 5601 Green Valley Drive Bloomington, MN 55437 vicki.greene@ged.com (952) 681-3820
<b>The Contract Administrator for each party will manage contract changes, updates, etc.</b>	
Jillian Yeates 525 W. Allegan St. 1st Floor NE PO Box 30026 Lansing, MI 48909 yeatesj@Michigan.gov 517-275-1131	Vicki Greene 5601 Green Valley Drive Bloomington, MN 55437 vicki.greene@ged.com (952) 681-3820

**7. Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Schedule A) if, in the opinion of the State, it will ensure performance of the Contract.

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

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



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

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

This Section is not intended to and is not 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).

- 9. Administrative Fee and Reporting.** Contractor must pay an administrative fee of 1% on all payments made to Contractor under the Contract including transactions with the MiDEAL members, and other states (including governmental subdivisions and authorized entities). Administrative fee payments must be made online by check or credit card:

**State of MI Admin Fees:** <https://www.thepayplace.com/mi/dtmb/adminfee>

**State of Mi MiDEAL Fees:** <https://www.thepayplace.com/mi/dtmb/midealfee>

Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales. Reports should be mailed to [MiDeal@michigan.gov](mailto:MiDeal@michigan.gov).

The administrative fee and purchasing activity report are due within 30 calendar days from the last day of each calendar quarter.

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

If extended, Contractor must supply all Contract Activities at the established Contract prices and terms. The State reserves the right to impose an administrative fee and negotiate additional discounts based on any increased volume generated by such extensions.

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

- 11. Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.
- 12. Intellectual Property Rights.** Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in the Work Product produced as part of the Contract Activities, and all associated intellectual property rights, if any. In general, Work Product constitutes works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Work Product, and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Work Product, including all intellectual property rights therein. Contractor also irrevocably waives any and all claims Contractor may have now or hereafter have in any jurisdiction to so called "moral rights" or rights of *droit moral* with respect to the Work Product. If Contract Activities includes the purchase or use of software, such purchase, use, or access to Software shall be subject to **Schedules B and C or D** of this Contract. Notwithstanding the foregoing, it is acknowledged the GED® test and *GED Ready®: The Official Practice Test* are pre-existing, registered, copyrighted intellectual property solely developed by and owned exclusively by Contractor. The GED Testing Program is a fully established and developed testing program. No materials are produced by Contractor under this contract that are considered Work Product. All right, title, and interest in and to the Contractor's information, property, or materials furnished to State in connection with the performance of the Statement of Work, whether such materials are written, printed, digital or electronic or otherwise recorded in any format, including but not limited to, the Contractor's GED® test, test items, test data, test delivery software, testing materials, testing policies and procedures, logo, trademarks, trade names, copyrighted materials, *GED Manager™*, *GED Analytics™*, *MyGED®* portal, *GED PrepConnect™*, *GEDWorks™*, *GED Marketplace™*, including any changes or modifications thereto remain with Contractor.
- 13. Subcontracting.** Contractor will not, without the prior written approval of the State's Program Manager, which consent may be given or withheld in the State's sole discretion, engage any Third Party to perform Services. The State's approval of any such Third Party (each approved Third Party, a "**Permitted Subcontractor**") does not relieve Contractor of its representations, warranties or obligations under this Contract. Without limiting the foregoing, Contractor will: (a) be responsible and liable for the acts and omissions of each such Permitted Subcontractor (including such Permitted Subcontractor's employees who, to the extent providing Services or Deliverables, shall be deemed Contractor Personnel) to the same extent as if such acts or omissions were by Contractor or its employees; (b) name the State a third party beneficiary under Contractor's Contract with each Permitted Subcontractor with respect to the Services; (c) be responsible for all fees and expenses payable to, by or on behalf of each Permitted Subcontractor in connection with this Contract, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits; and (d) notify the State of the location of the Permitted Subcontractor and indicate if it is located within the continental United States.
- 14. Staffing.** Contractor is solely responsible for all Contractor Personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits. The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.

**15. Key Personnel.** If, in the sole discretion of the State, Key Personnel are required to complete the Contract Activities, such Key Personnel shall be identified in **Schedule A - Statement of Work**. The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State's Program Manager, and provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection.

Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("**Unauthorized Removal**"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under **Section 28**.

It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 28**, Contractor will issue to the State an amount set forth in **Schedule A - Statement of Work** (each, an "**Unauthorized Removal Credit**").

**16. Background Checks.** Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and Subcontractor employees, who may have access to any database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or Subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018. Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.

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

**18. Change of Control.** Contractor will notify within 30 days of any public announcement, or otherwise once legally permitted to do so, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of

Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

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

**19. Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Schedule A.

**20. Acceptance.** Contract Activities 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 Schedule A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with **Section 28**, Termination for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, 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.

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 perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

**21. Delivery.** Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in Schedule A. All containers and packaging become the State's exclusive property upon acceptance.

**22. Risk of Loss and Title.** Until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Contract Activities, Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.

**23. RESERVED.**

**24. Terms of Payment.** 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 Contract Activities performed as specified in **Schedule A**. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. All prices are exclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

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

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/SIGMAVSS> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

**25. Payment Disputes.** The State may withhold from payment any and all payments and amounts the State disputes in good faith, pending resolution of such dispute, provided that the State: (a) timely renders all payments and amounts that are not in dispute; notifies Contractor of the dispute prior to the due date for payment, specifying in such notice: (i) the amount in dispute; and (ii) the reason for the dispute set out in sufficient detail to facilitate investigation by Contractor and resolution by the parties; (b) works with Contractor in good faith to resolve the dispute promptly; and (c) promptly pays any amount determined to be payable by resolution of the dispute.

Contractor shall not withhold any Contract Activities or fail to perform any obligation hereunder by reason of the State's good faith withholding of any payment or amount in accordance with this **Section 25** or any dispute arising therefrom.

**26. Reserved.**

**27. 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 Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.

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

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in **Section 29**, Termination for Convenience.

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

**29. Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.

**30. Effect of Termination.** Upon and after the termination or expiration of this Contract or one or more Statements of Work for any or no reason: (a) Contractor will be obligated to perform all Transition Responsibilities specified in **Section 31**; (b) all licenses granted to Contractor in State Data will immediately and automatically also terminate. Contractor must promptly return to the State all State Data not required by Contractor for its Transition Responsibilities, if any; (c) Contractor will: (i) return to the State all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the State's Confidential Information; (ii) permanently erase the State's Confidential Information from its computer systems; and (iii) certify in writing to the State that it has complied with the requirements of this **Section 30** in each case to the extent such materials are not required by Contractor for Transition Responsibilities, if any.

**31. Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days, "**Transition Period**"), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

**32. General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from

and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

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

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

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

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

**34. Limitation of Liability and 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. 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.

**35. 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 subcontractor, or an officer or director of Contractor or 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: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) 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.

**36. RESERVED.**

**37. State Data.** If the Contract Activities includes the hosting of State Data with Contractor or Permitted Subcontractors, Contractor must also comply with **Schedule F – Data Hosting and Security for Hosted Software and Services** of this Contract

- a. Ownership. The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) the State's data collected, used, processed, stored, or generated as the result of the Contract Activities; (b) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Contract Activities, 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, (c) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Contract Activities, which is defined under the Health Insurance Portability and Accountability Act (HIPAA) and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this Contract.
- b. Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. 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 Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this Contract.
- c. Extraction of State Data. Contractor must, within five (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 the State Data in the format specified by the State.
- d. Backup and Recovery of State Data. Unless otherwise specified in Schedule A, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Schedule A, Contractor must maintain a contemporaneous backup of State Data that can be recovered within two (2) hours at any point in time.
- e. Loss or Compromise of Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or



organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) with approval and assistance from the State, notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twenty-four (24) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) pay for any costs associated with the occurrence, including but not limited to any costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution; (g) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (h) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and (i) provide to the State a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, not be tangentially used for any solicitation purposes, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. The State will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification to any other party, including but not limited to public media outlets, must be reviewed and approved by the State in writing prior to its dissemination. The parties agree that any damages relating to a breach of this **Section 37** are to be considered direct damages and not consequential damages. This section survives termination or expiration of this Contract.

- f. State's Governance, Risk and Compliance (GRC) platform, if applicable. If the Contract Activities includes the purchase, use, or access to software, Contractor is required to assist the State with its security accreditation process through the development, completion and ongoing updating of a system security plan using the State's automated GRC platform, and implement any required safeguards or remediate any security vulnerabilities as identified by the results of the security accreditation process.
- g. Compliance with IRS Pub 1075. If the Contract Activities includes access to, or the hosting of, any tax information, Contractor must also comply with the applicable requirements of IRS Publication 1075, **Schedule G – Exhibit 7 Safeguarding Contract Language** and **Schedule H – Safeguard Requirements of Confidential Tax Data.**

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

- a. Meaning of Confidential Information. For the purposes of this Contract, the term “**Confidential Information**” means all information and documentation of a party that: (a) has been marked “confidential” or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked “confidential” or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked “confidential” or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term “Confidential Information” does not include any information or documentation that was: (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 by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor’s responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State’s Confidential Information in confidence. At the State’s request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.

- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

### **39. Data Privacy and Information Security.**

- a. Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards, which are available to Contractor upon request.
- b. Audit by Contractor. No less than annually, Contractor must conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to the State.
- c. Right of Audit by the State. Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Contract Activities and from time to time during the term of this Contract. During the providing of the Contract Activities, on an ongoing basis from time to time and without notice, 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. In lieu of an on-site audit, upon request by the State, Contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.
- d. Audit Findings. Contractor must implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.
- e. State's Right to Termination for Deficiencies. 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.

### **40. RESERVED.**

#### **41. RESERVED.**

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

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

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

**43. Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) Contractor will perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (c) Contractor will meet or exceed the performance and operational standards, and specifications of the Contract; (d) Contractor will provide all Contract Activities in good quality, with no material defects; (e) Contractor will not interfere with the State's operations; (f) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (g) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (h) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (i) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (j) the Contract signatory has the authority to enter into this Contract; (k) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; (l) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and that (m) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under **Section 28**, Termination for Cause. If Contract Activities includes purchase, use, or access to software, Contractor must agree to additional Warranties and Representations found in **Schedules B** or **D** of this Contract, as applicable.

**44. Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to

Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

- 45. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 46. ADA Compliance.** The State is required to comply with the Americans with Disabilities Act of 1990 (ADA), and has adopted a formal policy regarding accessibility requirements for websites and software applications. Contractor's Service Software must comply, where relevant, with level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.0.
- 47. RESERVED**
- 48. RESERVED.**
- 49. RESERVED.**
- 50. Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and Executive Directive 2019-09. 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 (as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Contract.
- 51. Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
- 52. Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
- 53. Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
- 54. Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
- 55. 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 makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.

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

**57. Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.

**58. Schedules.** All Schedules, Attachments and Exhibits that are referenced herein and attached hereto are hereby incorporated by reference. The following Schedules are attached hereto and incorporated herein:

<b>Schedule A</b>	Statement of Work
<b>Schedule B</b>	Pricing and Fees
<b>Schedule C</b>	Reserved
<b>Schedule D</b>	Reserved
<b>Schedule E</b>	Support Services and Service Level Agreement for Hosted Services
<b>Exhibit 1 to Schedule E</b>	Contractor Hosted Software and Services
<b>Schedule F</b>	Data Hosting and Security for Hosted Software and Services
<b>Attachment A</b>	Service Level Agreement

**59. Entire Agreement and Order of Precedence.** This Contract, which includes Schedule A – Statement of Work, and schedules and exhibits which are hereby expressly incorporated, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Schedule A – Statement of Work; (b) second, Schedule A – Statement of Work as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE

STATE OR ITS AUTHORIZED USERS FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

- 60. 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.
- 61. Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 62. Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

# STATE OF MICHIGAN

Master Agreement No. 20000000496  
High School Equivalency Testing Services

## SCHEDULE A STATEMENT OF WORK CONTRACT ACTIVITIES

### BACKGROUND

In accordance with Michigan Compiled Law (MCL) 791.233, also known as Public Act (PA) 320, all prisoners arrested after December 15, 1998 and serving two or more years in prison are required to have a High School Equivalency (HSE) for parole consideration. This requirement is now a mandate in the following Michigan Department of Corrections (MDOC) policies: Policy Directive 05.02.112 Education Programs for Prisoners, Policy Directive 06.05.104 Parole Process, and Operating Procedure 06.05.135 Parole Release Processing.

MDOC requires HSE testing and scoring services to prevent being in violation of PA 320 and MDOC policies and procedures. As this Public Act changes, so may the commodities and services of the Contract.

MDOC provides HSE testing at correctional facilities within its jurisdiction. The State reserves the right to add or delete testing centers. The State assigns, trains, and certifies HSE examiners (Proctors) at each correctional facility to provide these services to maintain compliance of PA 320.

### SCOPE

The Contractor must supply each HSE approved testing center within MDOC's jurisdiction with HSE computer- based testing (CBT) and/or HSE paper and pencil versions of the testing material, including test booklets and answer sheets when requested by MDOC.

Additionally, the Contractor must provide scoring services, transcripts/certificates (in the event the state elects to use GEDTS's subcontractor, "Parchment"), and maintain all HSE scores indefinitely for all test takers. The Contractor must ensure the scores are available to the State and must be available to the test takers upon release to the community.

The Contractor may be requested to provide other related commodities and services as required by the State. These may include other forms of a high school diploma or equivalency according to any changes made to the existing PA 320.

### REQUIREMENTS

#### 1) General Requirements:

a) **Service Specifications:** The Contractor must provide the following:

i) Electronic CBT HSE Testing Services

- (1) The Contractor must ensure CBT functions within the information technology environment which is approved by the State. Currently, MDOC is approved to deliver CBT within the Prisoner Program Information Network (PPIN).
- (2) PPIN is a collection of applications used for prisoner academic, vocational education and career trades development while serving prison sentences within MDOC prison facilities. The list of 20 plus software applications for prisoner-only use includes Microsoft Office, GED testing, and the Electronic Law Library as examples. PPIN is setup to be



extremely secure to prevent unauthorized network traffic in or out of PPIN (i.e. no unauthorized internet or outside access). Due to the security requirements, PPIN is a segmented and closed network utilizing Active Directory on a dedicated domain that other State of Michigan (SOM) users cannot access.

- (3) The Contactor must notify the Program Manager of any testing computer application modifications at least 30 calendar days prior to implementing technical updates to ensure the State has ample time to notify proctors and locations/facilities of any anticipated downtime.
- (4) The Contractor must notify the Program Manager no later than 30 calendar days prior to any planned maintenance to the Contractor's testing website (or provide the Program Manager with an annual maintenance schedule), which will result in disruption of website access, including the start and end time of planned maintenance. Planned maintenance will be performed overnight (10pm-6am local time).
- (5) If applicable: The Contractor must be able to deliver the HSE content electronically. The Contractor's proposed web application for electronic delivery of HSE content must be approved by the State prior to implementation. The State may move to another lockdown or virtual environment as the future hosting solution. The Contractor must work with the State during any future transition at no cost to the State.

ii) Paper and Pencil Version

- (1) A paper and pencil version may continue to run as a joint program and performed in accordance with the Contractor's GED Program Policy Manual (**Appendix I**) for paper-based testing. The Contractor must supply MDOC-approved testing center with the paper and pencil version of the tests, along with related testing materials including answer sheets, within 10 business days of the order.
  - (2) Copyrighted tests are exclusively owned by the Contractor. The testing materials, including but not limited to, the test booklets, test items, answer sheets, answers, proctoring instructions, assessment guides, and any other ancillary materials will remain the Contractor's property.
  - (3) If paper test versions are determined to be invalid or defective, the Contractor must immediately notify the Contract Administrator, Contract Manager or designee, and Program Manager by email. The Contractor is solely responsible for notifying the State and coordinating and paying for the return of the testing materials.
  - (4) Upon completion of the test, the test administrator will send the test form(s) and answer document(s) via a Contractor prepaid, secure, traceable shipping method to the Contractor. Upon receipt of the test form(s) and answer document(s) in a secure, controlled environment, they must be checked in and the data must be entered into the test driver, quality checked, scored, and securely stored.
- b) **Scoring Services:** The Contractor must provide scoring services, notify the State of scores, and provide scores to State's current transcript and diploma subcontractor, DiplomaSender (or, in the event of the State's change in subcontractor to GEDTS's subcontractor, Parchment), within 5 business days (electronic scoring) and 30 calendar days (paper scoring) for each prisoner who completes the entire testing.
- c) **Transcripts:** The Contractor must provide scores to State's current transcript and diploma subcontractor, DiplomaSender, the current subcontractor for HSE transcripts and diplomas, or Parchment the former mutually approved subcontractor.

- i) The Contractor must ensure the State always has online access to scores of test takers and the test statistical reporting. Scores must be accessible to the State 24 hours per day, 7 days per week via an on-line data application system.
  - ii) The Contractor must ensure the scores are available to the test takers upon release to the community.
  - iii) Corrections Test Center Administrators can access a test-taker's account through GED Manager™ before the test-taker is released into the community.
  - iv) A test-taker who has been released into the community can call the Contractor's toll-free test-taker support phone number to gain access to his or her account on GED.com. Detailed instructions concerning this process are included in the "Accessing Scores After Release" document in **Appendix D**.
  - v) The Contractor's website provides detailed information on the policies and procedures for corrections test centers administering the GED® test, available at **[https://ged.com/educators\\_admins/test\\_admin/corrections](https://ged.com/educators_admins/test_admin/corrections)**.
  - vi) The Contractor must provide basic policies and procedures, student set-up information, scheduling and scoring resources, Frequently Asked Questions, transition information for test-takers, and step-by-step guides on the site. The guides available for download must include the following:
    - (1) Passers Report for Corrections
    - (2) Creating Accounts in GED Manager™
    - (3) Manages Students/Student Search
    - (4) Releasing Student from Program
    - (5) Accessing Account after Release
    - (6) Test Center Support Line
    - (7) Test-Taker Score Reports
  - vii) To obtain duplicate score reports, GED® test-takers can download and save or print their score reports easily from their GED.com account.
  - d) **Data:** The Contractor must indefinitely maintain HSE records/reports of all subtest and complete battery tests.
  - e) **Ownership:** The State maintains ownership of test scores and correlating identification, such as prisoner number. The test-taker may also agree to give the Contractor the right to use the test-taker's information for the GED Program and as agreed to by the test-taker.
  - f) **Related Items:** The Contractor may be requested to provide other related commodities and services as required by the State. These may include any changes made to the existing PA 320.
- 2) Training:** The Contractor must provide the following training:
- a) The State of Michigan MDOC intends to utilize its own resources for proctoring tests.
  - b) The Contractor must provide annual HSE training and online/technical assistance for proctors and professional development for MDOC administrative staff during business hours of 6:00 a.m. – 9:00 p.m. local time, if requested.
  - c) The Contractor must provide the following training capabilities as part of this contract:
    - i) Contractor must provide MDOC with training on all the systems and processes that provide support to the GED® program, including but not limited to GED Manager™, GED

Analytics™, and the GED® accommodations process and systems. The specific modules and training schedule will be established at MDOC's direction.

- ii) Contractor must provide annual HSE training and online/technical assistance for proctors and professional development for MDOC administrative staff during the business hours of 6:00 a.m. to 9:00 p.m. local time, if requested.
- iii) Professional Development for MDOC Administrative Staff: Contractor must provide a comprehensive program of support, tools, and resources for adult education professionals in a wide array of on-demand, web-based, and in-person professional development and assistance. An overview of the Contractor's Professional Development Initiative and available professional development materials can be found in **Appendix F**.
- iv) Online/Technical Assistance for Proctors: Corrections Test Center Administrators (Proctors) can access detailed information on the policies and procedures for administering the GED® test through the Contractor's website, available at **[https://ged.com/educators\\_admins/test\\_admin/corrections](https://ged.com/educators_admins/test_admin/corrections)**.
- v) Contractor must provide basic policies and procedures, student set-up information, scheduling and scoring resources, Frequently Asked Questions, transition information for test-takers, and step-by-step guides on the site. The guides available for download must include the following:
  - (1) Passers Report for Corrections
  - (2) Creating Accounts in GED Manager™
  - (3) Manages Students/Student Search
  - (4) Releasing Student from Program
  - (5) Accessing Account after Release
  - (6) Test Center Support Line
- vi) Contractor must provide technical assistance to all GED® testing sites via an automated system and through a support helpline.
  - (1) The support helpline provides technical support such as assistance with setting-up Contractor's Testing System software and technical issues related to downloading, launching, and delivering tests.
  - (2) Callers can gain assistance with customer service, management issues, and support for the Contractor's Testing System software and technical issues including, but not limited to:
    - (a) General GED® student support
    - (b) Creating a student profile in GED Manager™
    - (c) Scheduling students for same day or future appointments
    - (d) Assistance with GED Manager™
    - (e) Date of birth (DOB) changes
    - (f) General, non-student related testing center policies and procedures
    - (g) Locating client reference materials, rules agreements or other documents on the Contractor's website
    - (h) Assistance with software installation and set up for a new testing center

- (i) Resetting passwords or unlocking an account (Note: Password resets can be done by selecting Login Help or Account Recovery Tool within the program the test center is using)
  - (j) Launching or delivering GED® tests
  - (k) Launching or delivering GED Ready™
  - (l) Running an express RMA
  - (m) Obtaining a new security certificate
  - (n) Obtaining a challenge key
- d) The Contractor must provide MDOC educators access to professional development content to help build better understanding of the test and its content, classroom content to use with prisoner, outreach materials to spread the word to the adult learning community, and additional information that answer questions about the HSE testing program.
- i) Contractor's website must provide basic policies and procedures, student set-up information, scheduling and scoring resources, Frequently Asked Questions, transition information for test-takers, and step-by-step guides on the site. The guides available for download must include the following:
- (1) Passers Report for Corrections
  - (2) Creating Accounts in GED Manager™
  - (3) Manages Students/Student Search
  - (4) Releasing Student from Program
  - (5) Accessing Account after Release
  - (6) Test Center Support Line
- ii) MDOC educators can access these materials at [https://ged.com/educators\\_admins/test\\_admin/corrections](https://ged.com/educators_admins/test_admin/corrections).
- e) Contractor must provide Professional Development Initiative and available professional development materials, as outlined in **Appendix F**.

**3) Services Levels:** Refer to Attachment A.

**4) Time Frames:**

- a) Paper Materials: Paper material must be delivered within 10 business days from receipt of order. The receipt of order date is pursuant to Section 2, Notices, of the Standard Contract Terms.
- b) Scoring Services: The Contractor must provide scoring services, notify the State of scores, and provide scores to State's selected transcript and diploma subcontractor within 5 business days (electronic scoring) and 30 calendar days (paper scoring) for each prisoner who completes the entire testing.

**5) Delivery:** Delivery of paper materials will be made to the address on Delivery Order (DO)

- a) Paper and Pencil Versions
  - i) The Contractor must deliver all paper and pencil testing materials in a secure approved package to the location designated on the DO. The Contractor must ensure all testing materials are delivered to the correctional facilities in secure boxes and marked "Confidential."
  - ii) Contractor must deliver these materials in secured packages with tracking numbers. The Contractor must track all booklets by code.

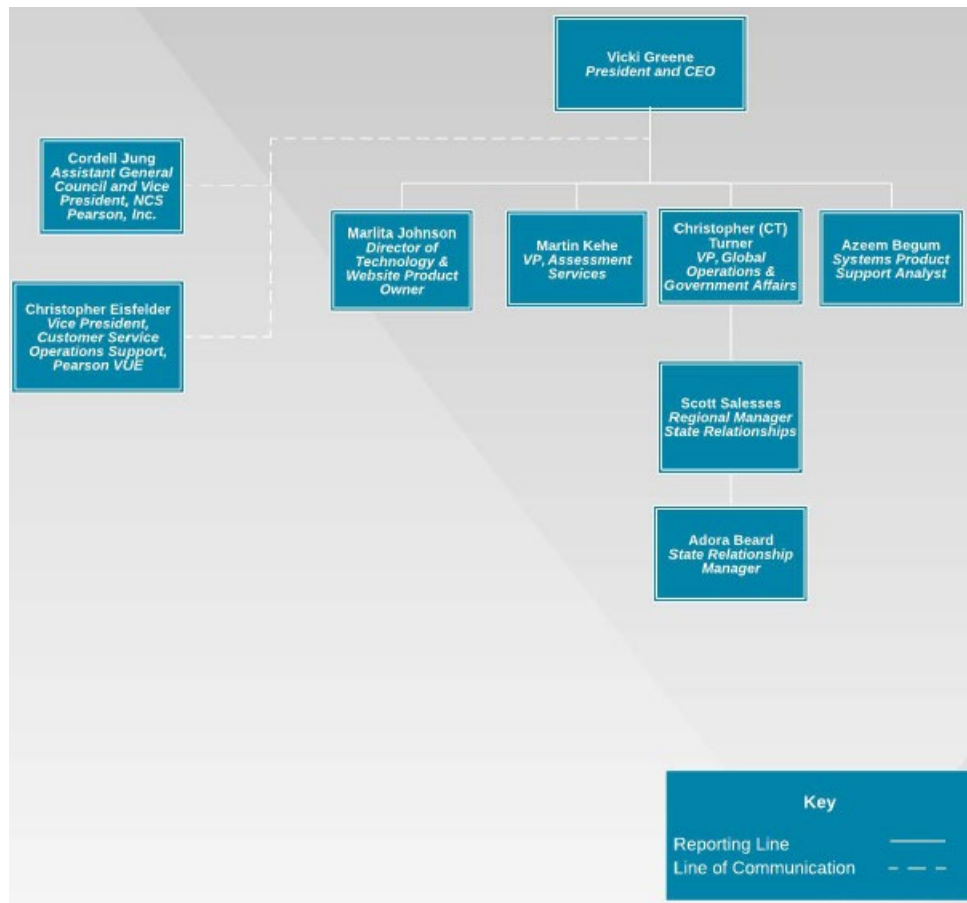
- iii) Upon receipt of the examination materials, the test center is required to store the materials in a secure location and is responsible for test scheduling and administration.
  - iv) Returns of any defective materials will be handled in the same manner in the Contractor's office.
- b) The Contractor's delivery programs:
- i) Contractor will provide MDOC users with the ability to use GED Manager™ to schedule paper-based test events. MDOC users can schedule "Test Events," where they can select test-takers, subjects, language, and test dates. Once a test event is scheduled, the Contractor must print the test booklets, answer sheets, and a batch cover sheet. The test materials are preprinted with customized test-taker identifying information. A copy of the directions for administering the test is included in the package as well as directions for return shipping. The test administrator will be responsible for maintaining strict control over the documents through the testing period. The test materials are securely shipped to the test site via a traceable shipping method. The materials are in a waterproof, plastic mailer inside the carton/box. The package includes a prepaid, coded return shipping label and an extra waterproof plastic mailer for the test center to send the completed answer sheets and test booklets to the Contractor for scanning and scoring.
  - ii) The directions for administering the test will be securely destroyed by the test administrator and do not need to be returned to the Contractor. Further information can be found in **Appendix I**: GED® Program Policy Manual.
- c) For paper-based testing, the Contractor must utilize whichever carrier is best for the specific shipping location. The Contractor will utilize FedEx, UPS or other carriers that provide guaranteed, secure delivery. The Contractor will ship paper-based forms in a cardboard box. The forms are in waterproof plastic mailers. Contractor must provide an extra mailer for the test center to use in the return of the completed tests.
- d) Packaging and Palletizing
- e) Packaging must be optimized to permit the lowest freight rate. Shipments must be palletized whenever possible using manufacturer's standard 4-way shipping pallets.
- 6) **Acceptance**: The State will use the following criteria to determine acceptance of the Contract Activities:
- a) Each test submission must be scored within the time frame designated.
  - b) Proper development and posting of necessary HSE completion reports.
  - c) Delivery of the HSE scores to State's selected transcript and diploma subcontractor for prisoners that pass the HSE within 30 calendar days for paper testing and five (5) business days for electronic testing.
  - d) The receipt of HSE materials to each location within 10 business days of Delivery Order. Materials must be packaged and shipped via a prepaid, secure, traceable shipping method.
    - i) Signing for the delivery of supplies does not constitute acceptance.
    - ii) Acceptance will be once the State has verified: the requested quantities are delivered in the requested time frame, product is verified to conform to the specifications of the contract, and the quantities are verified with the purchase order and shipper.
  - e) Contractor will correct any errors (e.g. error related to paper tests, such as illegible paper test materials, errors in names or other information on transcripts, etc.) within 10 business days at no cost.

7) **Staffing**:

- a) Contractor Representative: The Contractor must appoint one (1) individual as a Contractor Representative, specifically assigned to State of Michigan accounts, with at least 1-year of experience with Contractor, that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. (the “Contractor Representative”).

<b>Contractor Representative’s Name:</b>	Adora Beard
<b>Title:</b>	State Relationship Manager
<b>Telephone Number:</b>	(202) 306-0761
<b>Fax Number:</b>	(952) 681-4790
<b>Email Address:</b>	adora.beard@ged.com
<b>City and state of physical location</b>	Washington, D.C.

- b) The Contractor must notify the Contract Administrator immediately before removing or assigning a new Contractor Representative.
- c) Customer Service Toll-Free Number: The Contractor must specify its toll-free number for the State to contact the Contractor Representative. The Contractor Representative must be available for calls during the hours of 8 am to 5 pm local time, Monday – Friday, excluding State holidays.
- d) MDOC may continue to contact the Contractor Representative by phone, email, mobile phone, teleconference, or through Contractor’s toll-free call center number: 1-877-EXAM-GED (392-6433).
- e) Technical Support, Repairs and Maintenance: The State may contact Contractor’s technical support through a toll-free number, 1-866-389-3665. Technical support is also available via email (pvsupportdesk@pearson.com, pvamericasvss@pearson.com).
- i) Contractor will provide technical assistance to GED® testing sites via an automated system and through a support helpline. In the event an MDOC test center experiences technical problems with the exam, or needs assistance with a procedural question, Contractor’s technical support is available via email (pvsupportdesk@pearson.com, pvamericasvss@pearson.com) or through a toll-free number (1-800-704-3613). The Contractor’s toll-free number is available Monday through Friday from 8:00 a.m. to 10:00 p.m. and Saturday 8:00 a.m. to 8:00 p.m. Eastern Time. Outside these hours, support will still be available from one of Contractor’s other regional support desks.
- ii) When providing technical support, the Contractor’s Service Levels for response times must match Schedule E, Exhibit1, Section 2.3.1 which requires one (1) hour response time for Critical and High Service Errors and a three (3) hour response time for Medium and Low Service Errors.
- (a) When providing technical support, the Contractor’s Service Levels for resolution times must match Schedule E, Exhibit 1, Section 2.3.a which requires a three (3) hour resolution time for Critical Service Errors, a four (4) hour resolution time for High Service Errors, a two (2) Business Day resolution time for Medium Service Errors, and a five (5) Business Day resolution time for Low Service Errors.
- f) Work Hours: The Contractor must provide on-site Contract Activities during the State’s normal working hours Monday – Friday, 7:00 a.m. to 4:30 p.m. local time, and possible night and weekend hours depending on the requirements of the project.
- g) Contractor’s Organizational Chart:



<b>Core Member</b>	<b>Team</b>	<b>Functions and Responsibilities</b>
<b>Contractor's Team Members</b>		
Vicki Greene President and Chief Executive Officer		Responsible for overseeing and leading all Contractor's business and activities, continuing to make sure that the GED® test is fully aligned with college- and career-readiness standards.
Martin D. Kehe Vice President, Assessment Services		Responsible for the conceptualization, design, development, and deployment of products including and supporting the GED® test. Leads a team of 13 assessment and content specialists in seven locations around the US.
Marlita Johnson Director of Technology & Website Product Owner		Drives technology strategy to provide high-value products and services to adult learners, GED Administrators™, and adult basic educators. Leads business analyst, quality assurance, development, data analyst, and DevOps teams.

<b>Core Member</b>	<b>Team</b>	<b>Functions and Responsibilities</b>
Azeem Systems Support	Begum Product Analyst	Provides internal and external end-user support, coordinates operational needs, and leads data implementation projects. Maintains vendor relationships and manages day-to-day interactions.
Christopher Turner	(CT) Vice President, Global Operations & Government Affairs	Leads the state relationships management, public affairs, and operations teams for both the US and international markets. Maintains regular communication with US Department of Education and Department of Labor officials and interfaces with elected officials and policymakers, including state executives and cabinet members. Assists in overarching program development.
Scott Salesses	Regional Manager, State Relationships	Manages state relationship managers who oversee GED® testing programs across half of the United States. Represents the state relationship team in projects across GEDTS.
Adora Beard	State Relationship Manager	Main contact and key resource for state GED® testing program leaders. Communicates efficacy practices, strengthens access, and increases utilization of the GED® testing program.
<b>Additional Members</b>		
Cordell Jung	Assistant General Counsel and Vice President NCS Pearson, Inc.	Serves as the managing attorney of a 10-person international legal office while representing and establishing policies.
Chris Eisfelder	Vice President, Customer Service Operations Support	Oversees the accommodations team responsible for accommodations and accessibility processes for test-takers.

h) Disclosure of Subcontractors:

i) The Contractor understands that MDOC is currently using DiplomaSender to fulfill HSE diploma and transcript services; should MDOC elect to use GED Credentialing™, Contractor's online diploma and transcript fulfillment service, at any point in the future of this Contract, the following would apply:

- (1) Parchment, Inc.
- (2) 7001 N. Scottsdale Rd, Suite 1050
- (3) Scottsdale, AZ 85253
- (4) (480) 719-1646



- ii) Contractor will work with subcontractor, Parchment, Inc., to provide diploma fulfillment services. Parchment is a credentials management company allowing learners, educators, and employers to request, verify, and share credentials in simple and secure ways.
- iii) Contractor and Parchment will fulfill diplomas and transcripts for both new and repeat requests for as far back as there is data available.
- iv) Parchment will provide a private label interface for test-takers, a GED® credential database, and integration with GED.com. Parchment will provide full-service printing and electronic fulfillment.

**8) Security:** The Contractor will be subject the following security procedures:

- a) No active police warrants or pending charges on any staff assigned to this contract, including subcontractors.
- b) MDOC reserves the right to approve, decline, or remove Contractor and subcontractor staff from providing services on this Contract.
- c) Contractor staff that provide direct services to offenders (prisoner, parolee, probationer), handle or may have access to offender records, or provides supervisory services to staff performing these functions, must complete the Law Enforcement Information Network (LEIN) Form at the start of the contract and annually thereafter, as directed by the Michigan Department of Corrections.
- d) The completed LEIN Request must be sent to the MDOC-PMCD-FOA-LEINS@michigan.gov and approved by MDOC prior to Contract staff working with MDOC offenders. There is no cost associated with the LEIN. The LEIN form will be provided to the Contractor.
- e) Contractor must perform background checks on subcontractor staff prior to their assignment. Documentation must be provided upon request to the State of Michigan. Contractor is responsible for all costs associated with the processing the background checks. The State, in its sole discretion, may also perform background checks. The background check must include the Michigan State Police Internal Criminal History Access Tool (ICHAT), or the municipal/federal equivalent. The Contractor must maintain a copy of the background check(s) for auditing purposes.
- f) Contractor staff may be required to complete and submit an RI-8 Fingerprint Card for Fingerprint Checks to MDOC.
- g) The Contractor and subcontractor must verify and document whether a staff member assigned to the Contract is related to or acquainted with an offender receiving services under this Contract. For staff who are related to or acquainted with an offender, the Contractor's staff member must complete the Offender Contact Exception Request (CAJ-349) and submit it to MDOC Program Manager or designee. The Contractor must ensure its staff complete the form and notify MDOC Program Manager of any changes throughout the contract term. The Contractor must maintain a copy of the form in the employee's personnel file for auditing purposes.

**9) Meetings:** The Contractor must attend the following meetings:

- a) The Contractor is required to participate in a kick-off meeting scheduled by the State. The kick-off meeting is expected to be scheduled within 30 calendar days of the Contract Effective Date.
- b) Annual business review meeting (if requested by either party), may be scheduled within 30 calendar days at the close of each contract year.
- c) The State may request other meetings, as it deems appropriate.

**10) Reporting:** The Contractor must submit the following written reports to the Program Manager, upon request.

- a) The Contractor must indefinitely maintain test records/reports of all prisoners that tested and completed any HSE subtests and the complete testing battery.
- b) The Contractor must provide an annual completion report (if requested) within 30 calendar days at the close of each contract year, that shows the number of tests administered, the number of tests passed, the number of sub-tests passed, and the total number of test takers for that program year.

**11) Pricing:**

- a) Price Term: Pricing is firm for the base years of the resulting Contract.
- b) Price Changes
  - i) Adjustments will be based on changes in actual Contractor costs. Any request must be supported by written evidence documenting the change in costs. The State may consider sources, such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase in pricing; and any other data the State deems relevant.
  - ii) Following the presentation of supporting documentation, both parties will have 30 calendar days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes, for no longer than 30 calendar days, unless extended by mutual agreement.
  - iii) The Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period.

**12) Ordering Authorizing Document:** The appropriate authorizing document for the Contract will be a signed Master Agreement and a Delivery Order (DO).

**13) Invoice and Payment:**

- a) Invoice Requirements: All invoices submitted to the State must include: (a) date; (b) Master Agreement (MA) number (c); DO number; (d) quantity; (e) description of the Contract Activities; (f) unit price; (g) shipping cost (if any); and (h) total price. Overtime, holiday pay, and travel expenses will not be paid.
- b) Invoices must be received by MDOC within 30 calendar days of delivery of goods. Receipt of invoice is the date MDOC receives a complete and correct invoice.
- c) Invoices may be sent to the Remittance Address on the Delivery Order.
- d) Payment Methods: The State will make payment for Contract Activities via Electronic Funds Transfer (EFT). The Contractor is required to register to receive payments by EFT <http://www.michigan.gov/SIGMAVSS>.
- e) Procedure: Any discrepancies regarding completion of a test must be resolved by the Contractor and the State prior to submitting an invoice for payment.
- f) Billing process: GEDTS bills on a quarterly basis in advance of the quarter. As invoices will consist of equal quarterly installments, The Contractor does not anticipate any issues or discrepancies regarding invoices.

# STATE OF MICHIGAN

Master Agreement No. 200000000496  
High School Equivalency Testing Services

## SCHEDULE B PRICING

Prices includes all costs, including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State (e.g., shipping and handling, per piece pricing, and palletizing).

ITEM #	DESCRIPTION	U/M	UNIT COST
1.	HSE testing annual licensing agreement for up to 6,500 test-takers (paper or computer) per year	Year	\$240,000.00*
2.	Shipping (if applicable)		Included
3	Access to records and reports after the Contract expires, if applicable		Included
4.	Training, if applicable		Included
5.	Additional Transcripts	Each	GEDTS will comply with the State's requirement to provide data to the contracted transcript vendor.
6.	Additional Diplomas	Each	GEDTS will comply with the State's requirement to provide data to the contracted transcript vendor.

\*The license fee is an annual fee billed and payable in four equal quarterly payments. The 6,500 test-takers refers to the number of individuals each of whom would be entitled to take the entire battery (all four content areas) of assessment. In other words, if one prisoner takes all four tests (Math, RLA, Social Studies and Science) that counts as one, not four.

Retakes are tracked by content area and the free retake offer is intended to allow up to two free retakes per content area. (This collectively could represent eight free retakes (2 for each content area).

**Schedule C**

Reserved

**Schedule D**

Reserved

## Schedule E

### CONTRACTOR HOSTED SOFTWARE AND SERVICES

**1. Definitions.** In addition to the definitions found in the Contract Terms, for the purposes of this Contract, the following terms have the following meanings:

**“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.

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

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

**“Integration Testing”** has the meaning set forth in **Section 4.2(c)**.

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

**“Open-Source License”** has the meaning set forth in **Section 2.3**.

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

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

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

**“State Materials”** means all materials and information, including documents, data, know-how, ideas, methodologies, specifications, software, content and technology, in any form or media, directly

or indirectly provided or made available to Contractor by or on behalf of the State in connection with this Contract.

“**Support Services**” means the Software maintenance and support services Contractor is required to or otherwise does provide to the State pursuant to this **Schedule E** and **Exhibit 1** to this **Schedule E**.

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

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

“**Warranty Period**” means the ninety (90) calendar-day period commencing on the date of the State's Acceptance of the Software.

## **2. Hosted Software License Grant and Source Code Escrow**

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

(a) access and use the Hosted Services, including in operation with other software, hardware, systems, networks and services, for the State's business purposes, including for Processing State Data;

(b) generate, print, copy, upload, download, store and otherwise Process all GUI, audio, visual, digital and other output, displays and other content as may result from any access to or use of the Hosted Services;

(c) prepare, reproduce, print, download and use a reasonable number of copies of the Specifications and Documentation for any use of the Hosted Services under this Contract; and

(d) access and use the Hosted Services for all such non-production uses and applications as may be necessary or useful for the effective use of the Hosted Services hereunder, including for purposes of analysis, development, configuration, integration, testing, training, maintenance, support and repair, which access and use will be without charge and not included for any purpose in any calculation of the State's or its Authorized Users' use of the Hosted Services, including for purposes of assessing any Fees or other consideration payable to Contractor or determining any excess use of the Hosted Services as described in **Section 2.2**.

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

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

2.4 Open-Source Licenses. For Contractor Hosted Software only (and not for the provision of Software-as-a-Service), any use hereunder of Open-Source Components shall be governed by, and subject to, the terms and conditions of the applicable open-source license ("Open-Source License"). Contractor shall identify and describe in an exhibit to the Statement of Work each of the Approved Open-Source Components of the Software, and include an exhibit attaching all applicable Open-Source Software Licenses or identifying the URL where these licenses are publicly available.

2.5 Source Code Escrow. The parties may enter into a separate intellectual property escrow agreement. Such escrow agreement will govern all aspects of Source Code escrow and release. Contractor hereby grants the State a license to use, reproduce, and create derivative works from the deposit material, provided the State may not distribute or sublicense the deposit material or make any use of it whatsoever except for such internal use as is necessary to maintain and support the Software. Copies of the deposit material created or transferred pursuant to this Contract are licensed, not sold, and the State receives no title to or ownership of any copy or of the deposit material itself. The deposit material constitutes Confidential Information of Contractor pursuant to **Section 38.a** of this Contract (provided no provision of **Section 38.e** calling for return of Confidential Information before termination of this Contract will apply to the deposit material).

### **3. Hosted Services Testing and Acceptance.**

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

#### 3.2 Testing and Acceptance.

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

(b) Upon completion of the State's testing, the State will notify Contractor of its acceptance ("**Accept**" or "**Acceptance**") or, if it has identified any noncompliance with the Specifications, rejection



(“**Reject**” or “**Rejection**”) of the Hosted Services. If the State Rejects the Hosted Services, the State will provide a written list of items that must be corrected. On receipt of the State’s notice, Contractor will promptly commence, at no additional cost or charge to the State, all reasonable efforts to complete, as quickly as possible and in any event within twenty (20) days (or such other period as may be agreed upon by the Parties in writing) from receipt of the State’s notice, such necessary corrections, repairs and modifications to the Hosted Services to bring them into full compliance with the Specifications.

(c) If any corrective measures are required under **Section 3.2(b)**, upon completion of all such measures, Contractor will notify the State in writing and the process set forth in **Section 3.2(a)** and **Section 3.2(b)** will be repeated; provided that if the State determines that the Hosted Services, as revised, still do not comply in all material respects with the Specifications, the State may, in its sole discretion:

- (i) require the Contractor to repeat the correction, repair and modification process set forth in **Section 3.2(b)** at no additional cost or charge to the State; or
- (ii) terminate any and all the relevant Statement of Work, this Contract and any other Statements of Work hereunder.

(d) The parties will repeat the foregoing procedure until the State Accepts the Hosted Services or elects to terminate the relevant Statement of Work as provided in **Section 3.2(c)(ii)** above. If the State so terminates the relevant Statement of Work, Contractor must refund to the State all sums previously paid to Contractor under such Statement of Work within ten (10) Business Days of the State’s written notice of termination, and the State will be relieved of all obligations thereunder.

#### **4. Support Services.**

**4.1 Maintenance and Support Services.** Contractor will provide Hosted Service maintenance and support services (collectively, “**Support Services**”) in accordance with the provisions set forth in this **Schedule E** and in the Service Level Agreement, attached as **Exhibit 1** to this **Schedule E** (the “**Support Services and Service Level Agreement**”).

**4.2 Maintenance Services.** Contractor will provide Hosted Service maintenance and support services (collectively, “**Software Support Services**”) in accordance with the provisions of this **Schedule E**, including **Exhibit 1** to this **Schedule E**. The Software Support Services are included in the Services, and Contractor may not assess any additional fees, costs or charges for such Software Support Services. Contractor will continuously maintain the Hosted Services to optimize Availability that meets or exceeds the Availability Requirement as defined in **Exhibit 1** to this **Schedule E**. Such maintenance services include providing to the State and its Authorized Users:

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

(b) all such services and repairs as are required to maintain the Hosted Services or are ancillary, necessary or otherwise related to the State’s or its Authorized Users’ access to or use of the

Hosted Services, so that the Hosted Services operate properly in accordance with the Contract and this **Schedule E**.

**4.3 Support Service Responsibilities.** Contractor will:

- (a) correct all Service Errors in accordance with the Support Service Level Requirements as defined in **Exhibit 1** to this **Schedule E**, including by providing defect repair, programming corrections and remedial programming;
- (b) provide unlimited telephone support between the hours of 7 am and 7 pm, EST;
- (c) provide unlimited online support 24 hours a day, seven days a week;
- (d) provide online access to technical support bulletins and other user support information and forums, to the full extent Contractor makes such resources available to its other customers; and
- (e) respond to and Resolve Support Requests as specified in **Exhibit 1** to this **Schedule E**.

**5. Software and Service Warranties.**

**5.1** Contractor represents and warrants to the State that:

(a) Contractor has, and throughout the Term and any additional periods during which Contractor does or is required to perform the Services, including Hosted Services, will have, the unconditional and irrevocable right, power and authority, including all permits and licenses required, to provide the Services and grant and perform all rights and licenses granted or required to be granted by it under this Contract;

(b) neither Contractor's grant of the rights or licenses hereunder nor its performance of any Services or other obligations under this Contract does or at any time will: (i) conflict with or violate any applicable law, including any law relating to data privacy, data security or personal information; (ii) require the consent, approval or authorization of any governmental or regulatory authority or other third party; or (iii) require the provision of any payment or other consideration by the State or any Authorized User to any third party, and Contractor shall promptly notify the State in writing if it becomes aware of any change in any applicable law that would preclude Contractor's performance of its material obligations hereunder;

(c) as accessed and used by the State or any Authorized User in accordance with this Contract and the Specifications, the Hosted Services, Documentation and all other Services and materials provided by Contractor under this Contract will not infringe, misappropriate or otherwise violate any Intellectual Property Right or other right of any third party;

(d) there is no settled, pending or, to Contractor's knowledge as of the Effective Date, threatened action, and it has not received any written, oral or other notice of any action (including in the form of any offer to obtain a license): (i) alleging that any access to or use of the Services, Hosted Services, or Software does or would infringe, misappropriate or otherwise violate any Intellectual Property Right of any third party; (ii) challenging Contractor's ownership of, or right to use or license,

any software or other materials used or required to be used in connection with the performance or receipt of the Services, or alleging any adverse right, title or interest with respect thereto; or (iii) that, if decided unfavorably to Contractor, would reasonably be expected to have an actual or potential adverse effect on its ability to perform the Services, including Hosted Services, or its other obligations under this Contract, and it has no knowledge after reasonable investigation of any factual, legal or other reasonable basis for any such litigation, claim or proceeding;

(e) the Software, Services (including Hosted Services) will in all material respects conform to and perform in accordance with the Specifications and all requirements of this Contract, including the Availability and Availability Requirement provisions set forth in Exhibit 1 to this **Schedule E**;

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

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

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

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

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

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

5.2 DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES IN THIS CONTRACT, CONTRACTOR HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED,

STATUTORY OR OTHERWISE UNDER OR IN CONNECTION WITH THIS CONTRACT OR ANY SUBJECT MATTER HEREOF.

## Schedule E, Exhibit 1

### SUPPORT SERVICES AND SERVICE LEVEL AGREEMENT FOR HOSTED SERVICES

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

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

“**Availability**” has the meaning set forth in **Section 3(a)**.

“**Availability Requirement**” has the meaning set forth in **Section 3(a)**.

“**Available**” has the meaning set forth in **Section 3(a)**.

“**Contractor Service Manager**” has the meaning set forth in **Section 2.1**.

“**Corrective Action Plan**” has the meaning set forth in **Section 4.3**.

“**Critical Service Error**” has the meaning set forth in **Section 4**.

“**Exceptions**” has the meaning set forth in **Section 3.2**.

“**Force Majeure Event**” has the meaning set forth in **Section 5.1**.

“**High Service Error**” has the meaning set forth in **Section 4**.

“**Hosted Services**” has the meaning set forth in **Schedule E**.

“**Low Service Error**” has the meaning set forth in **Section 4**.

“**Medium Service Error**” has the meaning set forth in **Section 4**.

“**Resolve**” has the meaning set forth in **Section 4.1(a)**.

“**Scheduled Downtime**” has the meaning set forth in **Section 3.3**.

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

“**Service Availability Credits**” has the meaning set forth in **Section 3.6(a)**.

“**Service Level Credits**” has the meaning set forth in **Section 4.2**.

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

“**Service Period**” has the meaning set forth in **Section 3(a)**.

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

“**Software Support Services**” has the meaning set forth in **Section 4.1**.

“**State Service Manager**” has the meaning set forth in **Section 2.2**.

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

“**Support Request**” has the meaning set forth in **Section 4**.

“**Support Service Level Requirements**” has the meaning set forth in **Section 4**.

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

## 2. Personnel

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

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

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

<b>Support Request Classification</b>	<b>Description:</b> <b>Any Service Error Comprising or Causing any of the Following Events or Effects</b>
Critical Service Error	<ul style="list-style-type: none"><li>• Issue affecting entire system or single critical production function;</li><li>• System down or operating in materially degraded state;</li><li>• Data integrity at risk;</li><li>• Declared a Critical Support Request by the State; or</li><li>• Widespread access interruptions.</li></ul>

High Service Error	<ul style="list-style-type: none"> <li>• Primary component failure that materially impairs its performance; or</li> <li>• Data entry or access is materially impaired on a limited basis.</li> </ul>
Medium Service Error	<ul style="list-style-type: none"> <li>• Hosted Service is operating with minor issues that can be addressed with an acceptable (as determined by the State) temporary work around.</li> </ul>
Low Service Error	<ul style="list-style-type: none"> <li>• Request for assistance, information, or services that are routine in nature.</li> </ul>

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

Support Request Classification	Service Level Metric (Required Response Time)	Service Level Metric (Required Resolution Time)		
Critical Service Error	One (1) hour	Three (3) hours		
High Service Error	One (1) hour	Four (4) hours		
Medium Service Error	Three (3) hours	Two (2) Business Days		
Low Service Error	Three (3) hours	Five (5) Business Days		

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

### 3. Force Majeure.

3.1 Force Majeure Events. Subject to **Section 5.3**, 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.

3.2 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 five (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.

3.3 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 Contractor Systems or any of Contractor’s telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to the Contractor Systems; or
  - (ii) the delay or failure of any Contractor Personnel to perform any obligation of Contractor hereunder unless such delay or failure to perform is itself by reason of a Force Majeure Event.



## Schedule F

### 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 **Section 1** 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.

“**Contractor Systems**” has the meaning set forth in **Section 5** 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 (44 U.S.C. § 3551 et seq.).

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

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

“**PSP**” means the State’s IT Policies, Standards and Procedures located at:

[http://michigan.gov/dtmb/0,4568,7-150-56355\\_56579\\_56755---,00.html](http://michigan.gov/dtmb/0,4568,7-150-56355_56579_56755---,00.html)

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

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

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

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

3.1. the Software must be hosted in a government cloud solution, and Contractor must maintain an annual SSAE 16 SOC 2 Type 2 audit for the Hosted Services throughout the Term maintain FedRAMP certification for the Hosted Services throughout the Term, and in the event the contractor is unable to maintain FedRAMP certification, the State may move the Software to an alternative provider, at contractor’s sole cost and expense;

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

3.3. maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State's Confidential Information that comply with the requirements of the State's data security policies as set forth in the Contract, and must, at a minimum, remain compliant with FISMA and the NIST Special Publication 800.53 (most recent version) MOD Controls using minimum control values as established in the applicable PSP.

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

3.5. take all reasonable measures to:

- (a) secure and defend all locations, equipment, systems and other materials and facilities employed in connection with the Services against "hackers" and others who may seek, without authorization, to disrupt, damage, modify, access or otherwise use Contractor Systems or the information found therein; and
- (b) prevent (i) the State and its Authorized Users from having access to the data of other customers or such other customer's users of the Services; (ii) the State's Confidential Information from being commingled with or contaminated by the data of other customers or their users of the Services; and (iii) unauthorized access to any of the State's Confidential Information;

3.6. ensure that State Data is encrypted in transit and at rest using AES 256bit or higher encryption;

3.7. ensure that State Data is encrypted in transit and at rest using currently certified encryption modules in accordance with FIPS PUB 140-2 (as amended). *Security Requirements for Cryptographic Modules*;

3.8. ensure the Hosted Services support Identity Federation/Single Sign-on (SSO) capabilities using Security Assertion Markup Language (SAML) or comparable mechanisms;

3.9. ensure the Hosted Services have multi-factor authentication for privileged/administrative access; and

3.10. assist the State, at no additional cost, with development and completion of a system security plan using the State's automated governance, risk and compliance (GRC) platform.

**4. Unauthorized Access.** Contractor may not access, and shall not permit any access to, State systems, in whole or in part, whether through Contractor's Systems or otherwise, without the State's express prior written authorization. Such authorization may be revoked by the State in writing at any time in its sole discretion. Any access to State systems must be solely in accordance with the Contract and this Schedule, and in no case exceed the scope of the State's authorization pursuant to this **Section 5**. 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.

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

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

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

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

6.3. if requested by the State, provide a copy of Contractor’s SSAE 16 SOC 2 Type 2 audit report to the State within thirty (30) days after Contractor’s receipt of such report. Any such audit reports will be recognized as Contractor’s Confidential Information.

6.4. if requested by the State, provide a copy of Contractor’s FedRAMP System Security Plan. The System Security Plan will be recognized as Contractor’s Confidential Information.

**7. Nonexclusive Remedy for Security Breach.** Any failure of the Services to meet the requirements of this Schedule with respect to the security of any State Data or other Confidential Information of the State, including any related backup, disaster recovery or other policies, practices or procedures, is a material breach of the Contract for which 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.

**8. PCI Compliance.**

8.1. 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.

8.2. 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, and Discover) 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.

8.3. 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.

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

8.5. 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.

8.6. The Contractor must provide the State's Contract Administrator with an annual Attestation of Compliance (AOC) 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.

**MICHIGAN DEPARTMENT OF CORRECTIONS**  
 Procurement, Monitoring, and Compliance Division  
 Service Level Agreement – Attachment A

<b>Agency/Vendor: GED Testing Service, LLC</b>
<b>Contract #: 200000000496</b>
<b>Effective Date: 4/1/2020</b>
<b>Metric: 1. Scoring Timelines</b>
<b>Definition and Purpose</b>
The Contractor must provide scoring services, notify the State of scores, and provide transcripts and/or certificates within 5 business days (electronic scoring) and 30 calendar days (paper scoring) for each prisoner who completes the entire testing in accordance with Schedule A: Statement of Work, Requirements, General Requirements, 1.2 Scoring Services.
<b>Data Source:</b>
Transmission Date (Computer-based examinations)/Mailing Date (Paper-based examinations) Receipt Date (Date scores are received by institution conducting examinations)
<b>Methodology:</b>
The Michigan Department of Corrections (MDOC) will review the receipt date of the scores against the transmission date to determine if the scoring is being completed in accordance with Schedule A: Statement of Work, Requirements, General Requirements, 1.2 Scoring Services.
<b>Acceptable Standard:</b>
Computer-based scoring is to be completed and score is received within 5 business days of test completion. Paper scoring is to be completed and made available to the scoring facility within 30 calendar days of the mailing date. Each calendar day a test is not scored past the specified timeframe per test shall be considered an occurrence.
<b>Amount for Failing to Meet Service Level Agreement</b>
A credit of \$100.00 will be assessed for each instance a score is not received as identified in the Acceptable Standard section above. For any credit that is assessed, the current payable due to the Contractor will be reduced, or a subsequent invoice will be reduced by \$100.00 per instance. Extenuating circumstances will be reviewed by MDOC Contract Manager before any Service Credits are assessed.